[redacted]

[redacted]

[redacted]

(24,936)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1915.

No. 653.

THE MISSISSIPPI RAILROAD COMMISSION, GEORGE R. EDWARDS, F. M. SHEPPARD, AND W. B. WILSON, MEMBERS THEREOF, ET AL., APPELLANTS,

vs.

THE MOBILE AND OHIO RAILROAD COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

INDEX.

	Page
Caption	1
Bill of complaint	3
Citation to Fox, attorney	14
Certified copies of orders of railroad commission as to trains Nos. 7, 8, 9, 10, 11, and 12, etc	15
Time table, Meridian to Mobile	23
Mobile to Meridian	24
Corinth to Meridian	25
Meridian to Corinth	27
Motion for restraining order, etc	29
Notice as to hearing on motion	29
Restraining order and return	30
Bond on restraining order	32
Answer	33
Affidavit of R. V. Taylor	44

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 6, 1915.

	Page
Testimony of R. V. Taylor	54
W. W. Middleton	67
Exhibit C—Statement of revenue, etc., trains Nos. 7, 8, 9, and 10, October 1 to 5, 1914	71
D—Statement of revenue, etc., trains Nos. 11 and 12, October 1 to 5, 1914	71
G—Statement of operating expenses and taxes, etc	72
Affidavit of G. A. Cooke	74
C. A. Pigford	75
G. H. Fordham	76
Offer of certain affidavits not set out here	77
Affidavit of C. I. Weems	80
Deposition of R. B. Mimms	81
R. W. McKinley	83
J. W. Wright	83
J. V. Ulmer	87
J. D. Waddell	89
T. G. Fewell	92
Sam Howard	94
M. J. Feiler	95
Cliff Williams	97
Clyde Soule	100
Leo Welhouse	100
Eugene Butler	102
E. D. Self	102
Jasper Boykin	104
H. F. Broach	106
W. D. Hawkins	108
A. W. Kaye	109
T. A. Thorn	110
Edgar Feibleman	111
A. B. Patterson	111
W. E. Hooper	113
R. D. Smith	113
M. C. Moore	121
Dr. F. M. Sheppard	125
Order granting injunction	132
Preliminary injunction and return	133
Petition for appeal	134
Order allowing appeal	135
Assignment of errors	136
Bond on appeal	137
Citation and service	139
Petition for extension of time to perfect appeal	140
Order for extending time to perfect appeal	141
Petition for further extension of time to perfect appeal	142
Order further extending time to perfect appeal	142
Præcipe for transcript of record on appeal	143
Clerk's certificate	149

CAPTION.

Pleas and proceedings had and done at a regular term of the United States District Court for the Southern District of Mississippi begun and held at Jackson, Mississippi, on the first Monday of November, 1914, that being the regular time and place designated by law for the holding of said court; present and presiding, the Hon. H. C. Niles, United States District Judge for Mississippi; Hon. R. C. Lee, United States Attorney for the Southern District of Mississippi; Hon. John G. Cashman, United States Marshal for the Southern District of Mississippi; Hon. L. B. Moseley, Clerk of said Court, and E. H. Reber, Court Crier, among the proceedings had and done were the following, to-wit:

IN THE

SUPREME COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, AT JACKSON, MISSISSIPPI.

Mobile & Ohio Railroad Company,

v. In Equity.

The Mississippi Railroad Commission, et al.

To the Honorable Judge of the United States District Court for the Southern District of Mississippi:

The Bill of Complaint of the Mobile & Ohio Railroad Company against the Mississippi Railroad Commission, F. M. Sheppard, President, and member of said Commission, George R. Edwards and W. B. Wilson, members of said Commission, and Ross A. Collins, Attorney General of the State of Mississippi.

I.

Complainant, Mobile & Ohio Railroad Company, respectfully shows that it is a corporation organized and existing under the laws of the State of Alabama, owning and operating a main line of railroad, with certain branches, running between Mobile, Alabama, and East St. Louis, Illinois, through the State of Mississippi and other States, as a common carrier of freight and passengers.

Complainant further shows that the defendant, the Mississippi Railroad Commission, is duly organized under the laws of the State of Mississippi, and that its office is at Jackson, Mississippi, the capital and seat of government of the said State; that the defendant, F. M. Sheppard, is the President and a member of said Commission, and a resident and citizen of the Southern District of Mississippi, and that Defendants George R. Edwards and W. B. Wilson are also members of said Commission, and the said F. M. Sheppard, George R. Edwards and W. B. Wilson constitute the said Railroad Commission; that the said Edwards and the said Wilson are citizens and residents of the Northern District of Mississippi, and that the official residence of F. M. Sheppard, Edwards and Wilson is at Jackson, Mississippi, in the Southern District of said State; that Defendant Ross A. Collins

is Attorney General of the State of Mississippi, whose domicile and office are both at Jackson, Mississippi, in the Southern District thereof.

II.

Complainant further shows that the matters in controversy in this suit, and the questions involved therein are questions arising under the Constitution and the laws of the United States, and that the matter in controversy exceeds the sum or value of three thousand dollars, exclusive of interest and costs.

III.

Complainant further shows that on account of the war now being waged in Europe complainant's revenue decreased to such an extent that it became imperatively necessary, as will be more fully set out hereinafter, for complainant to economize rigidly in every particular, and to that end the Vice-President and General Manager of complainant wrote to the members of the defendant Railroad Commission, and requested them to call a meeting at Jackson, Mississippi, on the fifteenth day of September, which they did, and at said meeting the said Vice-President and General Manager informed the defendant Railroad Commission of the condition of the complainant's finances, and the necessity of economy, and invited suggestions from the Commission as to the proper steps to take, but the Commission was unable to suggest anything. The complainant's Vice-President and General Manager then stated to the Commission that it was his purpose to discontinue all passenger trains then being run through the State of Mississippi on complainant's main line, except two daily trains each way.

The Commission neither objected nor acquiesced by formal order to the discontinuance of said trains, but one of the Commissioners moved that permission be granted complainant to discontinue said trains, which motion was seconded by another of the Commissioners. The third Commissioner then suggested that the matter be considered in executive session, and no vote was taken, and complainant heard nothing more from the Commission concerning the matter. Thereafter the complainant gave notice to the public that at 12:01 a. m., Monday, September 28, 1914, it would discontinue two daily passenger trains each way

running south of Meridian, Mississippi, and one daily passenger train running between Meridian, Mississippi, and Okolona, Mississppi, on the north, leaving two daily trains each way running between Meridian, Mississippi, and Mobile, Alabama, and three daily trains each way running north of Meridian beyond the Tennessee-Mississippi State line.

The said scheduled passenger trains were discontinued in accordance with the said notice to the public, but under an injunction secured by the Attorney General of Mississippi from the Chancellor of the Chancery Court of Lauderdale County, Mississippi, special trains were operated on the former schedules of said trains until the fifth day of October, 1914, on which date said Chancery Court dissolved said injunction on motion of defendant, your complainant herein. On the said fifth day of October, 1914, said special trains were discontinued.

IV.

On the 28th day of September, 1914, the defendant, Mississippi Railroad Commission, caused to be issued a citation to this complainant, a copy of which is hereto attached, requiring it to appear before said Commission at its office at Jackson, Mississippi, on the seventh day of October, 1914, and show cause, if any it could, why it should not be required to continue to operate between Corinth, Mississippi, and State Line, Mississippi, passenger trains known as Nos. 7, 8, 9, 10, 11 and 12, which were the trains that had been discontinued as above stated. In obedience to said citation, complainant appeared by its officers and agents before the Commission on the seventh day of October, 1914, and protested against the entry of any order requiring complainant to run any trains in addition to those being run on that date; that is to say, two trains daily each way south of Meridian, Mississippi, and three trains daily each way north of Meridian, and complainant presented its case fully to the Commission both as to the law and the facts.

But over complainant's protest the Commission, on October 7th, 1914, entered in the one case on the one citation six separate orders, requiring complainant to run, in addition to those run at that time, two trains each way daily from Meridian, Mississippi, to Waynesboro, Mississippi, and one train each way daily from Meridian, Mississippi, to Okolona, Mississippi, over complain-

ant's main line. Certified copies of said order, marked "Exhibit A," are attached to this bill, and filed herewith as a part hereof.

V.

Complainant further avers that it suffered many severe losses in business during the fiscal year ending June 30th, 1914, and at the end of that year its financial condition was not good, and it had no accumulated surplus out of which to pay losses during this period of depression. During the month of July, 1914, complainant's earnings were fair, but its expenses were exceedingly heavy. There was at that time, and had been for many months, a general business depression. On the second day of August, 1914, the war now being waged in Europe was begun, and this complainant, in common with other business interests generally, suffered a severe reduction in its business and revenue. Complainant did not in the month of August, 1914, or the months of July and August, 1914, earn sufficient net money above its operating expenses to pay its fixed charges and taxes. During the month of September its earnings decreased, and its total earnings during the month of September were $133,975.96 less than they were in September, 1913. During the period of the first two days of October, 1914, the earnings were $21,461.00 less than they were during the corresponding days of October, 1913, or a loss of over $10,000.00 per day. Unless complainant is permitted to economize in every possible way that is reasonable, in view of the condition of its business, as well as of the needs of the public which complainant serves, the outgo of complainant's money will be larger than its income, and it will have no means by which it can operate its road. Complainant has put into effect, and is putting into effect as fast as possible, every economy that it can, and still it has not yet been able to reduce its expenses to the point where they can be met from its income. Nor will all of the economies which it had determined on, but has not yet had time to put into effect, accomplish more than that result. The views of those who are best able to judge are that the war in Europe will last many months, and the complainant sees no hopes of improvement in its business so long as the war lasts.

Complainant delayed taking action to reduce its passenger service in the State of Mississippi until the necessity therefor

became absolute. Complainant was not and is not confronted with the mere possibility or a mere probability that it will be unable to meet its expenses, but had and actually reached that point. The people of the State of Mississippi, and several States served by complainant, have ceased on account of the depression in business to bring to complainant the volume of business which they brought before the European war commenced, and have ceased to pay complainant the amount of money which they paid prior to that time; and complainant says that it is inequitable and morally wrong for them, or the State of Mississippi, through the Railroad Commission, or any of its officers, to seek to compel the complainant to provide them with the same facilities when the amount of business which they bring to complainant will not enable it to do so and live. And complainant avers that the said orders of the Commission, attempting to require the complainant to furnish the said passenger facilities as therein set out, when the complainant's income is less than its expenses, separately and collectively, deprives complainant of the equal protection of the laws of its property without the process of the law, in violation of the Fourteenth Amendment of the Constitution of the United States and of the Constitution of Mississippi.

VI.

Complainant further avers that the said trains which were discontinued did not pay anything above the cost to complainant of operating and maintaining them, but on the contrary their cost to complainant was greater than the income derived from them. Trains Nos. 7 and 8 were put on on November 7th, 1909; Nos. 9 and 10 on November 26th, 1911, and Nos. 11 and 12 on July 20th, 1913. They were put on at the solicitation and request of citizens of Meridian and elsewhere, and it was believed by complainant's officers at the time they were put on that they would not pay, but when business was good, and when complainant was earning money above all of its expenses, complainant felt that it was justified in furnishing to the communities which it serves additional passenger facilities, even though the trains earned no money. But complainant says that there was no legal right in the public or in the State to require the inauguration and operation of said trains at a loss, and that the order of the Railroad Commission by which the State now seeks to require complainant to operate them, which cannot be done except at a

loss, deprives complainant of the equal protection of the laws and of its property, without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States and in violation of the Constitution of Mississippi.

VII.

Complainant files herewith, marked "Exhibit B," to this bill, schedules of all passenger trains running through Meridian, Mississippi, between stations in Mississippi, which were in effect prior to September 28, 1914; and also the new schedules of all such trains which complainant put in effect on Monday, the 28th day of September, 1914. It will be seen from an inspection of said schedules that under the old schedule there were four trains running north from Meridian, Mississippi, each day, Nos. 2, 4, 6, and 12, and that No. 12, which leaves Meridian under the old schedule at four o'clock p. m., and ran to Okolona, Mississippi, was discontinued under the new schedule. It will be observed, however, that Number 4, which under the old schedule was a fast train, stopping at only seven (7) stations between Meridian and Okolona, out of a total of twenty-two (22) stations, under the new schedule, stops at all stations, so that, in truth and reality, it takes the place of Number 12, which has been discontinued, there being a difference in the leaving time of the two trains of only two hours and five minutes. It will be further seen that in fact there would have been only one train discontinued north of Meridian, and that is a through train, run primarily for interstate travel, and not a local train.

With reference to south-bound trains going into Meridian, it will be seen that under the old schedule there were four trains, Nos. 1, 3, 5, and 11, and that under the new schedule No. 11 has been discontinued. It will also be noted that No. 3, which under old schedule was a fast train, run especially for interstate travel, and stopping only at eight (8) stations out of twenty-two (22) between Okolona and Meridian, under the new schedule has been changed to a local train between Okolona and Meridian, stopping at all stations, thus taking the place, to some extent at least, of Number 11, which has been discontinued. It will also be observed that in reality the train which has been discontinued is the through or fast train, designed for interstate travel. It will further be seen from an inspection of Exhibit "B" that

under the old schedule four (4) trains are run south from Meridian to State Line, Mississippi, and on to Mobile, Alabama, Nos. 1, 3, 7 and 9, and that under the new schedule Nos. 7 and 9 have been discontinued. Nos. 7 and 9 were local trains, stopping at all stations, and Nos. 1 and 3, under the old schedule were fast trains, run for through interstate passengers. It will be observed that Nos. 1 and 3 have been made local trains under the new schedule, stopping at all stations south of Meridian (except that No. 1 does not stop at Okatibbee and Basic City), so that in reality the change in schedule has been a discontinuance of through interstate trains, and not of local trains; and that so far as the local travel is concerned, the change has been merely a change in the time of arriving at and leaving stations. It will further be observed that under the old schedule No. 9 left Meridian, Mississippi, at 4:00 p. m., and that under the new schedule Number 3 leaves Meridian at 2:43 p. m., so that it can be used by all persons who under the old schedule would travel on Numbers 3 and 9, with slight inconvenience to them.

Under the old schedule four trains were run daily north from Mobile, Alabama, to Meridian, Numbers 2, 4, 8 and 10. Under the new schedule Numbers 8 and 10 have been discontinued. But it will be observed that under the old schedule Numbers 2 and 4 were fast trains, run for the accommodation of interstate passengers, and stopping at only four stations between State Line, Mississippi, and Meridian, out of thirteen (13) stations, while under the new schedule Numbers 2 and 4 stop at all stations (except that Number 2 does not stop at Basic City and Okatibbee). So that in reality the change has been equivalent to the discontinuance of the fast interstate trains and a change in the schedule of the local trains.

Complainant avers that the trains which it now operates under the new schedule are adequate and furnish reasonable service under the conditions existing at this time, and which will exist so far as can be seen for some time to come.

Complainant further avers that even if the people of the State of Mississippi and other persons travelling on complainant's main line in the State of Mississippi should be inconvenienced by the discontinuance of said trains, it is apparent that at most it is an inconvenience and could cause only a trifling loss to anyone, and that the orders of the Mississippi Railroad

Commission, which seek to require complainant to avoid inconvenience and trifling loss to such persons as desire to travel in the State of Mississippi on complainant's road, at the cost to complainant of the many thousand dollars which it will be required to expend, without any return, in the operation of said trains, is void for unreasonableness and deprives complainant of the equal protection of the laws, and of its property, without due process of law, and especially is this true in the present condition of complainant's business and income, as is set out hereinabove.

VIII.

Each of the many economies which this complainant had adopted, and is prepared to adopt, will bear more or less heavily upon various individuals, various employes, and various localities. It is necessary in order that there shall be no discrimination between these various individuals, employes and localities that the reduction of expenses shall be equitably distributed, and said distribution can be made only upon a comprehensive view of this complainant's entire business, and of the needs of the people served by its entire system. If the power of determining the means to be employed by complainant to bring its expenses within its income shall be taken from the complainant and lodged in the Commission, the complainant's ability to serve the public will be seriously impaired, and the attempt so to do deprives this complainant of its property without due process of law, contrary to the Fourteenth Amendment of the Constitution of the United States, and contrary to the Constitution of Mississippi.

IX.

Complainant further avers that by virtue of Section 3964 of the Revised Statutes of the United States, complainant's line is constituted a post road, and is required by the laws and contracts with the government of the United States to carry the mails and troops and munitions of war in interstate commerce; that by an act of Congress of the United States, approved the 20th day of September, 1850, entitled: "An Act granting the right of way, and making the grant of land to the States of Illinois, Mississippi, and Alabama, in the aid of the construction of a railroad from Chicago to Mobile," certain lands were do-

nated to the States of Alabama and Mississippi to aid in the construction of a railroad from Mobile, Alabama, to a point near the mouth of the Ohio River; and by appropriate acts of the Legislature of Mississippi and Alabama granted said lands to this complainant. By Section Four of the Act of Congress, approved September 20th, 1850, this complainant, the beneficiary under that Act, is made a public highway for the use of the United States Government, without charge, for the transportation of troops and property of the United States, and complainant is required thereunder to carry the mails at such price as Congress may fix.

Complainant says that while States have power to make reasonable regulations governing the intrastate business of interstate railroads, the order of the Railroad Commission in this case, which, if enforced, will endanger the life of this complainant, by reason of its lack of necessary income to meet the expense, is void as a burden upon interstate commerce and upon this instrument of the Government of the United States for the carrying of its troops, property and material, the effect upon interstate commerce and this complainant, as an instrument of the United States Government, being not merely indirect or incidental, but being an absolute destruction of complainant's ability to operate its road, in violation of the Commerce Clause of the Constitution of the United States.

X.

Complainant avers that the Railroad Commission has no power under statutes or otherwise to regulate the number of trains run by railroads, and the said orders are void for that reason; yet the orders were made under the general power granted the Commission by the State to make certain orders regulating railroads; and the Commission and the Attorney General are empowered by law to bring suits for penalties for violation of the Commission's orders and to seek to compel by mandamus and injunction obedience to such orders; and the State of Mississippi leaves it to the Commission and Attorney General to determine whether such suits shall be brought; and complainant is informed and verily believes that the Commission and Attorney General have, in the exercise of the power of determining such matters granted them by the State, determined and are

preparing to file suits against complainant for penalties in case complainant disobeys said orders and will file other suits to compel complainant by injunction and mandamus to obey said void orders. The said suits will, if the Commission and the Attorney General are not restrained, harass and annoy the complainant and will cost complainant considerable sums of money to defend, and complainant believes and so avers that they will, if they can, obtain a mandatory injunction requiring the reinstatement and operation of the trains which have been discontinued, which in the present condition of complainant's finances will be ruinous.

Complaint avers that said six orders of the Railroad Commission, on the fact thereof, provide that complainant shall be penalized in the sum of $500.00 in each case for each day's violation of said orders, the total penalty per day being $3,000.00; and that said penalties, while believed to be not legal, are so excessive as for the risk of having to pay the amount thereof, to intimidate complainant and since the ordinary method of testing said orders would subject the complainant to the risk of said enormous penalties, if in error, the said orders deprive complainant of its property without due process of law, contrary to the Fourteenth Amendment of the Constitution of the United States and complainant is without remedy except in this Court of Equity.

XI.

Complainant avers that said orders fixing the termini of certain said trains are unreasonable, illegal and unwarranted interference with the management of this Company's business, and will place a heavy burden upon this complainant, in that the short distance which certain of said trains will operate, namely, 52 miles, between Meridian and Waynesboro, Mississippi, will require complainant to expend a considerable sum of money each month in payment of wages of employes, who have a contract for a minimum mileage per day and per trip, this being true even if the same crews make a round trip between certain of the termini each day. Said orders, therefore, deprive this complainant of its proprty without due process of law, contrary to the Constitution of the United States.

XII.

Complainant avers that the Railroad Commission of Mississippi issued to it but one citation in this case, heard the testimony as to all the trains at one time, all of the testimony applying to each of the trains as applicable, and that while the Commission issued a separate order as to each train, the said orders are but parts of one decision on one subject matter in one suit between the same parties.

And complainant avers that if the said orders shall be enforced against it in this case complainant will be irreparably injured, because, so far as can be foreseen, complainant will have the greatest difficulty in meeting its obligations and running its road, even if it is allowed to economize in every particular which is reasonably possible, and if complainant's economies in the reduction of its passenger train service are not permitted to be put in effect, complainant cannot continue to operate its road; and complainant is without any adequate relief except in a Court of Equity.

PRAYER.

The premises considered, complainant prays that proper process issue, making parties against whom this bill is filed, parties to this suit, and that they be required to answer this bill but not under oath, answers under oath being especially waived. And that in view of the irreparable injury which is about to be inflicted upon complainant, and the multiplicity of penalty suits to which complainant will become subjected but for the restraining process of this Court, that a restraining order at once issue enjoining the Mississippi Railroad Commission, and the members thereof, and Ross A. Collins, Attorney General, from enforcing or taking any steps to enforce, compliance with those certain six orders of the Railroad Commission of Mississippi, or any of them, issued October 7th, 1914, hereinbefore referred to; and from taking any steps whatsoever to collect the penalties provided in any and all of said six orders, and further enjoining any and all other parties from proceeding against complainant under any and all of said orders of the Railroad Commission of October 7th, 1914.

Complainant further prays that upon a hearing for a temporary injunction, a temporary injunction of like character

issue, and that upon a final hearing, said temporary injunction be made permanent.

Complainant prays for all such other, further, general and special relief as in equity it may be entitled to.

This is the first application for injunction in this cause.

MOBILE & OHIO RAILROAD COMPANY,
By S. R. PRINCE, General Counsel.

CARL FOX,
J. M. BOONE,
Solicitors for Complainant.

State of Mississippi,
County of Monroe.

Personally appeared before the undersigned authority, S. R. Prince, who, being first duly sworn, says that he is the General Counsel of the Mobile & Ohio Railroad Company, and that he has read the foregoing bill of complaint and knows its contents and that the same is true of his own knowledge, except as to matters therein stated on information and belief, and as to those matters, he believes them to be true.

S. R. PRINCE.

Sworn to and subscribed before me this 8th day of October, 1914.

R. C. MAYNARD,
(SEAL) Notary Public, Monroe Co., Miss.

Jackson, Mississippi.

COPY.

The Commission
vs. No. 4191.
Mobile & Ohio R. R. Co.

IN RE CONTINUING ALL LOCAL AND INTRASTATE PASSENGER TRAINS.

Hon. Carl Fox, Atty.,
Mobile, Ala.

You are hereby cited to appear before the Railroad Commission of this State at their office in the State Capitol Building, at Jackson, Mississippi, October 7th, 1914, and show cause, if

any you can, why you should not be required to continue your local or intrastate passenger trains, known as Nos. 7, 8, 9, 10, 11 and 12, between Corinth, Mississippi and State Line, Mississippi.

Witness my hand and seal of the Railroad Commission this the 28th day of September 1914.

(SEAL)

JAMES GALCERAN,
Sec. Miss. Railroad Commission.

Copy of citation to R. V. Taylor, Vice-President and General Manager; Hon. Carl Fox, Attorney for Mobile & Ohio Railroad Co.

Mississippi Railroad Commission
v.
Mobile & Ohio Railroad Company.

IN RE THE DISCONTINUANCE OF PASSENGER TRAIN NO. 7 RUNNING FROM MERIDIAN TO STATE LINE, MISS.

This cause coming on for hearing before the Mississippi Railroad Commission at a regular meeting, this the 7th day of October, 1914, and the Mobile & Ohio Railroad Company having been duly notified to appear and present any objections or reasons that it might have in opposition to the proposed said order, and a number of representatives of said railroad, together with attorneys appearing, and after a full and complete hearing on the said matter, and having considered and understood the matter in all respects, and the Mississippi Railroad Commission deeming the continuance of this train and the operation of it as necessary, and the discontinuance of same as unwarranted on the part of the Railroad Company and unauthorized by the Mississippi Railroad Commission; and the Railroad Commission deeming this local passenger train as necessary towards furnishing to the public adequate passenger railroad facilities; and the Railroad Commission further deeming it of great detriment to the communities through which this train runs by a discontinuance of same; and the Railroad Commission further being of the opinion that said passenger train has heretofore been operated at a profit;

It is therefore ordered and adjudged by the Mississippi Railroad Commission that the said Mobile & Ohio Railroad Company be required to operate daily said train No. 7 from Meridian to Waynesboro, beginning Saturday morning, the 10th day of October, 1914, and said train shall leave Meridian at the same time that said train No. 7 has heretofore left Meridian, and shall make the same stops and make the same schedule time as it has heretofore been customary for this train to make; and that in case the said Mobile & Ohio Railroad Company shall violate the provisions of this order or shall fail to do or perform the duty imposed upon it in compliance with this order, it shall be penalized in the sum of $500.00 for each day so violating same.

MISSISSIPPI RAILROAD COMMISSION,

.....President.

H. .....Secretary.

I hereby certify that the above and foregoing is a true copy of an order passed by the Mississippi Railroad Commission on this date. Witness my hand and seal this the 7th day of October, 1914.

(SEAL) JAMES GALCERAN, Sec. Railroad Comm.

Mississippi Railroad Commission
v. No.——
Mobile & Ohio Railroad Company.

IN RE THE DISCONTINUANCE OF PASSENGER TRAIN NO. 8 RUNNING FROM STATE LINE TO MERIDIAN, MISS.

This cause coming on for hearing before the Mississippi Railroad Commission at a regular meeting, this the 7th day of October, 1914, and the Mobile & Ohio Railroad Company having been duly notified to appear and present any objections or reasons that it might have in opposition to the said proposed order, and a number of representatives of said Railroad, together with

attorneys appearing, and after a full and complete hearing of the said matter, and having considered and understood the matter in all respects, and the Mississippi Railroad Commission deeming the continuance of this train and the operation of it as necessary, and the discontinuance of same unwarranted on the part of the Railroad Company and unauthorized by the Mississippi Railroad Commission; and the Railroad Commission deeming this local passenger train as necessary towards furnishing to the public adequate passenger railroad facilities; and the Railroad Commission further deeming it of great detriment to the communities through which this train runs by a discontinuance of same; and the Railroad Commission further being of the opinion that said passenger train has heretofore been operated at a profit;

It is therefore ordered and adjudged by the Mississippi Railroad Commission that the said Mobile & Ohio Railroad Company be required to operate daily said train No. 8 from Waynesboro to Meridian beginning Saturday morning, the 10th day of October, 1914, and said train shall leave Waynesboro at the same time that said train No. 8 has heretofore left Waynesboro, and shall make the same stops and make the same schedule time as it has heretofore been customary for this train to make; and that in case the said Mobile & Ohio Railroad Company shall violate the provisions of this order, or shall fail to do or perform the duty imposed upon it in compliance with this order, it shall be penalized in the sum of $500.00 for each day of violating same.

ORDERED and adjudged this the 7th day of October, 1914.

MISSISSIPPI RAILROAD COMMISSION,

.....President.

H. .....Secretary.

I hereby certify that the above and foregoing is a true copy of an order passed by the Mississippi Railroad Commission on this date. Witness my hand and seal this the 7th day of October, 1914.

(SEAL) JAMES GALCERAN, Sec. Railroad Comm.

Mississippi Railroad Commission

v. No.....

Mobile & Ohio Railroad Company.

IN RE THE DISCONTINUANCE OF PASSENGER TRAIN NO. 9 RUNNING FROM MERIDIAN TO STATE LINE, MISS.

This cause coming on for hearing before the Mississippi Railroad Commission at a regular meeting, this the 7th day of October, 1914, and the Mobile & Ohio Railroad Company having been duly notified to appear and present any objections or reasons that it might have in opposition to the said proposed order, and a number of representatives of said railroad, together with attorneys appearing, and after a full and complete hearing of the matter, and having considered and understood the matter in all respects, and the Mississippi Railroad Commission deeming the continuance of this train and the operation of it as necessary, and the discontinuance of same unwarranted on the part of the Railroad Company and unauthorized by the Mississippi Railroad Commission; and the Railroad Commission deeming this local passenger train as necessary towards furnishing to the public adequate passenger facilities; and the Railroad Commission further deeming it of great detriment to the communities through which this train runs by a discontinuance of same; and the Railroad Commission further being of the opinion that said passenger train has heretofore been operated at a profit;

It is therefore ordered and adjudged by the Mississippi Railroad Commission that the said Mobile & Ohio Railroad Company be required to operate daily said train No. 9 from Meridian to Waynesboro beginning Saturday morning, the 10th day of October, 1914, and said train shall leave Meridian at the same time that said train No. 9 has heretofore left Meridian, and shall make the same stops and make the same schedule time as it heretofore has been customary for this train to make; and that in case the said Mobile & Ohio Railroad Company shall violate the provisions of this order, or shall fail to do or perform the duty imposed upon it, in compliance with this order, it shall be penalized in the sum of $500.00 for each day so violating same.

ORDERED and adjudged this the 7th day of October, 1914.

MISSISSIPPI RAILROAD COMMISSION,

.....President.

H. .....Secretary.

I hereby certify that the above and foregoing is a true copy of an order passed by the Mississippi Railroad Commission on this date. Witness my hand and seal this the 7th day of October, 1914.

(SEAL) JAMES GALCERAN, Sec. Railroad Comm.

Mississippi Railroad Commission

v.

Mobile & Ohio Railroad Company.

IN RE THE DISCONTINUANCE OF PASSENGER TRAIN NO. 10 RUNNING FROM STATE LINE TO MERIDIAN, MISS.

This cause coming on for hearing before the Mississippi Railroad Commission at a regular meeting, this the 7th day of October, 1914, and the Mobile & Ohio Railroad Company having been duly notified to appear and present any objections or reasons that it might have in opposition to the said proposed order, and a number of representatives of said railroad, together with attorneys appearing, and after a full and complete hearing of said matter, and having considered and understood the matter in all respects, and the Mississippi Railroad Commission deeming the continuance of this train and the operation of it as necessary, and the discontinuance of same unwarranted on the part of the Railroad Company and unauthorized by the Mississippi Railroad Commission; and the Railroad Commission deeming this local passenger train as necessary towards furnishing to the public adequate passenger railroad facilities; and the Railroad Commission further deeming it of great detriment to the communities through which this train runs by a discontinuance of same; and the Railroad Commission further being of the opinion that said passenger train has heretofore been operated at a profit;

It is therefore ordered and adjudged by the Mississippi Railroad Commission that the said Mobile & Ohio Railroad Company be required to operate daily the said train No. 10 from Waynesboro to Meridian, beginning Saturday morning, the 10th day of October, 1914, and said train shall leave Waynesboro at the same time said train No. 10 has heretofore left Waynesboro, and shall make the same stops and make the same schedule time as it has heretofore been customary for this train to make; and that in

case the said Mobile & Ohio Railroad Company shall violate the provisions of this order, or shall fail to do or perform the duties imposed upon it in compliance with this order, it shall be penalized in the sume of $500.00 for each day so violating same.

ORDERED and adjudged this the 7th day of October, 1914.

MISSISSIPPI RAILROAD COMMISSION,

.....President.

H. .....Secretary.

I hereby certify that the above and foregoing is a true copy of an order passed by the Mississippi Railroad Commission on this date. Witness my hand and seal this the 7th day of October, 1914.

(SEAL) JAMES GALCERAN, Sec. Railroad Comm.

Mississippi Railroad Commission

v.

Mobile & Ohio Railroad Company.

IN RE THE DISCONTINUANCE OF PASSENGER TRAIN NO. 11 RUNNING FROM OKOLONA TO MERIDIAN, MISS.

This cause coming on for hearing before the Mississippi Railroad Commission at a regular meeting, this the 7th day of October, 1914, and the Mobile & Ohio Railroad Company having been duly notified to appear and present any objections or reasons that it might have in opposition to the proposed said order, and a number of representatives of the said railroad, together with attorneys appearing, and after a full and complete hearing of the said matter, and having considered and understood the matter in all respects, and the Mississippi Railroad Commission deeming the continuance of this train and the operation of it as necessary, and the discontinuance of same unwarranted on the part of the Railroad Company and unauthorized by the Mississippi Railroad Commission; and the Railroad Commission deeming this local passenger train as necessary towards furnishing to the public adequate passenger railroad facilities; and the Railroad Commission further deeming it of great detriment to the communities through which this train runs by a dis-

continuance of same; and the Railroad Commission further being of the opinion that said passenger train has heretofore been operated at a profit;

It is therefore ordered and adjudged by the Mississippi Railroad Commission that the said Mobile & Ohio Railroad be required to operate daily said train No. 11 from Okolona to Meridian beginning Saturday morning, the 10th day of October, 1914, and said train shall leave Okolona at the same time that said train No. 11 has heretofore left Okolona, and shall make the same stops and make the same schedule time that it has heretofore been customary for this train to make; and that in case that the said Mobile & Ohio Railroad Company shall violate the provisions of this order, or shall fail to do or perform the duty imposed upon it in compliance with this order, it shall be penalized in the sum of $500.00 for each day so violating same.

ORDERED and adjudged this the 7th day of October, 1914.

MISSISSIPPI RAILROAD COMMISSION,

.....President.

H. .....Secretary.

I hereby certify that the above and foregoing is a true and correct copy of an order passed by the Mississippi Railroad Commission on this date. Witness my hand and seal this the 7th day of October, 1914.

(SEAL) JAMES GALCERAN, Sec. Railroad. Comm.

Mississippi Railroad Commission

v. No.....

Mobile & Ohio Railroad Company.

IN RE THE DISCONTINUANCE OF PASSENGER TRAIN NO. 12, RUNNING FROM MERIDIAN TO OKOLONA, MISS.

This cause coming on for hearing before the Mississippi Railroad Commission at a regular meeting, this the 7th day of October, 1914, and the Mobile & Ohio Railroad Company having been duly notified to appear and present any objections or reasons that it might have in opposition to the said proposed order, and a number of representatives of said railroad, together with

attorneys appearing, and after a full and complete hearing of said matter, and having considered and understood the matter in all respects, and the Mississippi Railroad Commission deeming the continuance of this train and the operation of it as necessary and the discontinuance of same unwarranted on the part of the Railroad Company and unauthorized by the Mississippi Railroad Commission; and the Railroad Commission deeming this local seal of this Court be given and delivered to the Governor of the passenger train as necessary towards furnishing to the public adequate passenger railroad facilities; and the Railroad Commission further deeming it of great detriment to the communities through which it runs by a discontinuance of same; and the Railroad Commission further being of the opinion that said passenger train has heretofore been operated at a profit;

It is therefore ordered and adjudged by the Mississippi Railroad Commission that the said Mobile & Ohio Railroad Company be required to operate daily said train No. 12 from Meridian to Okolona beginning Saturday morning, the 10th day of October, 1914, and said train shall leave Meridian at the same time that said train No. 12 has heretofore left Meridian, and shall make the same stops and make the same schedule time as it has heretofore been customary for this train to make; and that in case the said Mobile & Ohio Railroad Company shall violate the provisions of this order, or shall fail to do or perform the duty imposed upon it in compliance with this order, it shall be penalized in the sum of $500.00 for each day so violating same.

ORDERED and adjudged this the 7th day of October, 1914.

MISSISSIPPI RAILROAD COMMISSION,

.....President.

H. .....Secretary

I hereby certify that the above and foregoing is a true copy of an order passed by the Mississippi Railroad Commission on this date. Witness my hand and seal this the 7th day of October, 1914.

(SEAL) JAMES GALCERAN, Sc. Railroad Comm.

MERIDIAN TO MOBILE.

STATIONS.	No. 1 New.	No. 1 Old.	No. 3 New.	No. 3 Old.	No. 7 Old.	No. 9 Old.
Meridian	3:10 A.M.	3:10 A. M.	2:43 P. M.	1:55 P. M.	7:00 A. M.	4:00 P. M.
Okatibbee	3:22	3:31	2:55 f.	2:06	7:11 f.	4:12 f.
Basic City	3:31	3:29	3:08 f.	2:14	7:20 s.	4:21 s.
Enterprise	3:38 s.	3:36 s.	3:17 s.	2:22 s.	7:27 s.	4:28 s.
Stonewall	3:46 f.	3:43	3:25 f.	2:30	7:33 s.	4:36 s.
Quitman	4:02 s.	3:56 s.	3:40 s.	2:42	7:48 s.	4:51 s.
De Soto	4:13 f.	4:04	3:50 f.	2:51	7:57 s.	5:01 s.
Shubuta	4:29 s.	4:19 s.	4:07 s.	3:03 s.	8:10 s.	5:16 s.
Boice	4:47 f.	4:30	4:26 f.	3:15	8:24 f.	5:33 f.
Waynesboro	4:59 s.	4:40 s.	4:38 s.	3:24 s.	8:34 s.	5:43 s.
Winchester	5:12 s.	4:50	4:49 f.	3:33	8:43 s.	5:53 s.
Robinson Junction	5:20 f.	4:57	4:59 f.	3:38	8:53 s.	6:01 s.
Buckatunna	5:28 f.	5:03 f.	5:07 f.	3:43	9:00 s.	6:09 s.
State Line	5:45 f.	5:18 f.	5:24 f.	3:56	9:14 s.	6:26 s.

MOBILE TO MERIDIAN.

No. 10 Old.	No. 8 Old.	No. 4 Old.	No. 4 New.	No. 2 Old.	No. 2 New.	STATIONS.
11:00 A. M.	9:10 P. M.	2:50 P. M.	1:45 P. M.	12:20 A. M.	12:35 A. M.	Meridian.
10:45 f.	8:56 f.	2:38	1:31 f.	12:08	12:22	Okatibbee.
10:35 s.	8:48 s.	2:29	1:17 f.	11:59 P. M.	12:11	Basic City.
10:27 s.	8:41 s.	2:22 s.	1:09 s.	11:52	12:04 f.	Enterprise.
10:20 s.	8:33 s.	2:16	1:01 f.	11:46	11:57 f. P. M.	Stonewall.
10:05 s.	8:18 s.	2:05 s.	12:46 s.	11:33 s.	11:43 s.	Quitman.
9:55 s.	8:08 s.	1:56	12:36 f.	11:23	11:33 f.	De Soto.
9:39 s.	7:52 s.	1:44 s.	12:18 s.	11:10 s.	11:18 s.	Shubuta.
9:22 f.	7:34 f.	1:32	11:59 f. A.M.	10:56	11:00 f.	Boice.
9:11 s.	7:24 s.	1:23 s.	11:47 s.	10:47 s.	10:49 s.	Waynesboro.
9:00 s.	7:13 s.	1:14	11:35 f.	10:37 s.	10:37 s.	Winchester.
8:53 s.	7:05 s.	1:09	11:27 f.	10:31	10:30 f.	Robinson J'n.
8:45 s.	6:57 s.	1:04	11:20 f.	10:26 f.	10:23 f.	Buccatunna.
8:30 s.	6:41 s.	12:51	11:04 f.	10:13	10:08 f.	State Line.

CORINTH TO MERIDIAN.

STATION.	No. 1 New.	No. 1 Old.	No. 3 New.	No. 3 Old.	No. 5 New.	No. 5 Old.	No. 11 Old.
Corinth	8:08 s. P. M.	8:05 s. A.M.	7:30 s. P.M.	7:42 s. A. M.	12:10 s. P. M.	12:10 s. P.M.	
	8:17	8:15	7:37	7:50	12:30	12:30	
Alcorn	8:30	8:27	7:48	8:02	12:45	12:43 f.	
Rienzi	8:44 s.	8:40 s.	7:59 s.	8:13 s.	12:48 s.	12:55 s.	
Thrasher	8:49	8:45	8:04	8:17	1:02 f.	1:01 f.	
Booneville	9:03 s.	8:58 s.	8:14 s.	8:27 s.	1:14 s.	1:12 s.	
Wheeler's	9:15 f.	9:11 f.	8:24 s.	8:38 s.	1:25 s.	1:25 s.	
Baldwyn	9:28 s.	9:23 s.	8:35 s.	8:48 s.	1:35 s.	1:35 s.	
Guntown	9:40 f.	9:35 f.	8:44 s.	8:57 s.	1:47 s.	1:47 s.	
Saltillo	9:50 f.	9:45 f.	8:53 s.	9:06 s.	2:00 s.	2:00 s.	
Tupelo	10:10 s.	10:03 s.	9:08 s.	9:20 s.	2:20 s.	2:20 s.	
Verona	10:20 s.	10:13 s.	9:16 s.	9:31 s.	2:31 s.	2:32 s.	
Shannon	10:33 s.	10:24 s.	9:25 s.	9:43 s.	2:45 s.	2:45 s.	
Okolona	10:50 s.	10:40 s.	9:40 s.	10:00 s.	3:05 s.	3:05 s.	
	10:55	10:45	9:45	10:05	3:10	3:10	6:20 A. M.
Egypt	11:09	10:59	10:02 f.	10:18	3:25 s.	3:24 s.	6:34 s.
Prairie	11:23	11:13	10:20 f.	10:30	3:43 s.	3:40 s.	6:50 s.
Muldon	11:32 s.	11:22 s.	10:30 s.	10:38 s.	3:53 s.	3:50 s.	7:00 s.

West	11:50 s.	11:40 s.	10:47 s.	10:55 s.	4:10 s.	4:05 s.	7:17 s.
West Point	11:54	11:44	10:52	10:58 s.	4:15 s.	4:10 s.	7:19
Tibbee	12:03 A. M.	11:53	11:02 f.	11:07	4:26 f.	4:21 f.	7:29 f.
Mahew	12:08	11:58	11:10 f.	12:12 f.	4:34 s.	4:29 s.	7:35 s.
Artesia	12:18 s.	12:07 A. M.	11:20 s.	11:21 s.	4:45 s.	4:40 s.	7:47 s.
	12:21	12:10	11:25	11:24	4:55	4:45	7:52
Crawford	12:36	12:26	11:43 s.	11:38	5:12 s.	5:08 s.	8:09 s.
Brooksville	12:45 f.	12:35 f.	11:54 s.	11:46 s.	5:22 s.	5:19 s.	8:19 s.
Macon	12:59 s.	12:50 s.	12:09 s. P. M.	11:59 s.	5:37 s.	5:34 s.	8:34 s.
Shuqualak	1:16 f.	1:07 f.	12:28 s.	12:16 P. M.	5:55 s.	5:55 s.	8:52 s.
Wahalak	1:25	1:17	12:40 f.	12:25	6:06 s.	6:06 s.	9:03 s.
Scooba	1:35 f.	1:27 f.	12:53 s.	12:34 f.	6:19 s.	6:19 s.	9:16 s.
Electric Mills	1:44	1:38	1:03 f.	12:43 f.	6:30 s.	6:30 s.	9:28 s.
Sucarnochee	1:52	1:46	1:11 s.	12:49 s.	6:37 s.	6:37 s.	9:36 s.
Porterville	2:01	1:52	1:20 f.	12:56	6:46 s.	6:46 s.	9:43 s.
Narkeeta	2:05	1:56	1:26 f.	1:00	6:52 f.	6:52 f.	9:48 f.
Tamola	2:14	2:06	1:39 f.	1:09	7:07 f.	7:07 f.	10:01 f.
Lauderdale	2:24 f.	2:15 f.	1:50 s.	1:18	7:17 s.	7:17 s.	10:11 s.
Lockhart	2:37	2:27	2:05 f.	1:29	7:32 s.	7:32 s.	10:25 s.
Topton	2:41	2:32	2:13 f.	1:32	7:38 f.	7:38 f.	10:30 f.
Marion	2:48	2:40	2:22 f.	1:39	7:47 s.	7:47 s.	10:38 s.
Meridian	3:00	2:55	2:33	1:50	8:00	8:00	10:50

MERIDIAN TO CORINTH.

No. 12 Old.	No. 6 Old.	No. 6 New.	No. 4 Old.	No. 4 New.	No. 2 Old.	No. 2 New.	STATIONS.
	3:35	3:35	9:15 P. M.	9:16 P. M.	6:55 P. M.	6:56 A. M.	.....Corinth.
	3:30	3:30	9:05 P. M.	9:10 P. M.	6:45 P. M.	6:50 A. M.	
	3:17 f.	3:15 f.	8:52	8:58	6:31	6:38	.....Alcorn.
	3:03 s.	3:02 s.	8:40 s.	8:44 s.	6:19 s.	6:28 f.	.....Rienzi.
	2:57 f.	2:57 f.	8:35	8:39	6:14 f.	6:25 f.	.....Thrasher.
	2:45 s.	2:45 s.	8:23 s.	8:27 s.	6:03 s.	6:15 s.	.....Booneville.
	2:32 s.	2:32 s.	8:10 s.	8:13 s.	5:51 f.	6:05 f.	.....Wheelers.
	2:22 s.	2:21 s.	7:59 s.	8:01 s.	5:41 s.	5:56 s.	.....Baldwyn.
	2:11 s.	2:10 s.	7:48 s.	7:49 s.	5:31 f.	5:48 f.	.....Guntown.
	2:00 s.	2:00 s.	7:38 s.	7:38 s.	5:20 f.	5:38 f.	.....Saltillo.
	1:43 s.	1:43 s.	7:21 s.	7:20 s.	5:06 s.	5:24 s.	.....Tupelo.
	1:33 s.	1:33 s.	7:11 s.	7:09 s.	4:55 s.	5:18 s.	.....Verona.
	1:22 s.	1:22 s.	7:01 s.	6:57 s.	4:45 f.	5:08 f.	.....Shannon.
	1:05	1:05	6:45	6:40	4:30	4:55	.....Okolona.
8:30 P.M.	1:00 P. M.	1:00	6:40	6:35	4:24	4:50	
8:13 s.	12:44 s. P.M.	12:44 s.	6:28	6:20 f.	4:11	4:36	.....Egypt.
7:55 s.	12:26 s.	12:26 s.	6:15	6:01	3:56	4:21	.....Prairie.
7:45 s.	12:15 s. P. M.	12:15 s. P. M.	6:06 s.	5:51 s.	3:47 s.	4:12 s.	.....Muldon.
7:27 s.	11:55 s.	11:55 s.	5:50 s.	5:34 s.	3:31 s.	3:55 s.	.....West Point.
7:25	11:50	11:50	5:47	5:29	3:28	3:52	
7:15 f.	11:40 f.	11:40 f.	5:38	5:19 f.	3:19	3:42	.....Tibbee.
7:08 s.	11:32 s.	11:32 s.	5:33	5:11 f.	3:14	3:37	.....Mayhew.
6:58 s.	11:21 s.	11:20 s.	5:24 s.	5:00 s.	3:05 s.	3:27 s.	.....Artesia.
6:55	11:10	11:10	5:21	4:55	3:02	3:24	

6:40 s.	10:52 s.	10:52 s.	5:08	4:38 s.	2:47	3:07	.....Crawford.
6:29 s.	10:41 s.	10:41 s.	4:59 s.	4:27 s.	2:38 s.	2:59 s.	.....Brooksville.
6:12 s.	10:21 s.	10:21 s.	4:43 s.	4:10 s.	2:23 s.	2:43 s.	.....Macon.
5:55 s.	10:05 s.	10:05 s.	4:29	3:53 s.	2:07	2:27	.....Shuqualak.
5:43 s.	9:53 s.	9:53 s.	4:20	3:42 f.	1:58	2:17	.....Wahalak.
5:20 s.	9:40 s.	9:40 s.	4:10 f.	3:29 s.	1:47 f.	2:06 f.	.....Scooba.
5:20 f.	9:28 s.	9:28 s.	4:01	3:20 s.	1:38	1:58	.....Electric Mills
5:13 s.	9:19 s.	9:19 s.	3:55 s.	3:13 s.	1:33	1:52	.....Sucarnochee.
5:06 s.	9:10 s.	9:10 s.	3:49	3:05 f.	1:27	1:46	.....Porterville.
5:00 f.	9:04 f.	9:04 f.	3:45	2:59 f.	1:24	1:41	.....Narkeeta.
4:47 f.	8:50 f.	8:50 f.	3:36 f.	2:46 f.	1:14	1:31	.....Tamola.
4:37 s.	8:39 s.	8:39 s.	3:27	2:35 s.	1:06 f.	1:22 f.	.....Lauderdale.
4:23 f.	8:25 s.	8:25 s.	3:17	2:20 f.	12:52	1:06	.....Lockhart.
4:19 f.	8:20 f.	8:20 f.	3:12	2:13 f.	12:48	1:04	.....Topton.
4:11 s.	8:12 s.	8:12 s.	3:05	2:06 f.	12:41	12:57	.....Marion.
4:00 P.M.	8:00 A. M.	8:00 A. M.	2:55 P. M.	1:55 P. M.	12:30 A. M.	12:45 A. M.	.....Meridian.

The letter "s" indicated that the Station opposite is a regular stop for the train, the schedule of which is given in that particular column. The letter "f" indicates that the station opposite is a flag stop for that train. Where no letter appears the station is neither a regular nor a flag stop for that particular train.

Following appears on back:

No. 21.
BILL OF COMPLAINT.
Filed, October 9th, 1914.—L. B. Moseley, Clerk.
M. & O. R. R. Co., vs. Miss. R. R. Comm., et als.

THIS PAGE BOUND

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI AT JACKSON, MISSISSIPPI.

The Mobile & Ohio Railroad Company

v. In Equity.

Mississippi Railroad Commission, et al.

Now comes complainant and files this, its motion for the issuance of a restraining order for the reasons and one the grounds set forth in its Bill of Complaint to prevent irreparable damage to complainant; and complainant further makes this its application to this Court for a hearing on this cause for an interlocutory injunction in accordance with Section 266 of the Judicial Code of the United States, as amended by the Act of Congress approved March 14th, 1913.

S. R. PRINCE,
CARL FOX & J. M. BOONE,
Attorneys for Complainant.

The following appears on the back

M. & O. R. R. Co. vs. Miss. R. R. Coms. Motion for restraining order and application for hearing on motion for interlocutory injunction. Filed Oct. 9th, 1914. L. B. Moseley, Clerk.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF THE STATE OF MISSISSIPPI.

Mobile & Ohio Railroad Company

v. In Equity.

The Mississippi Railroad Commission, et al.

Notice is hereby given defendants that plaintiff will, at the hearing of its motion for an interlocutory injunction at New Orleans, Louisiana, on October 27th, 1914, present and read to the Court affidavits in support of the allegations of its bill, and will also ask the Court for the privilege of orally examining witnesses in support of its motion for an interlocutory injunction.

S. R. PRINCE, Attorney for Plff.

The following appears on the back:

Mobile & Ohio R. R. Co. v. Miss. R. R. Comm. Notice to Defendants Copy filed Oct. 22nd, 1914. L. B. Moseley, Clerk.

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI AT JACKSON, MISSISSIPPI.

The Mobile & Ohio Railroad Company

v. In Equity.

Mississippi Railroad Commission, et al.

RESTRAINING ORDER.

Whereas, in the above named cause it has been made to appear upon the bill of the complaint filed herein that a writ of injunction preliminary to the final hearing is proper, and that prima facie the complainant is entitled thereto, enjoining the defendants from the acts complained of and about to be committed.

Now, on motion of the said complainant, it is ordered that the defendants appear before the Judge of this District Court of the United States for the Southern District of Mississippi, and a Judge of the Circuit Court of the United States, and another District Judge of the United States Court, sitting to hear this matter on the 27th day of October, 1914, at 10:00 a. m., at the Court Room of the United States Circuit Court of Appeals at New Orleans, Louisiana, and then and there show the cause, if any they have, why the preliminary injunction therein prayed for should not issue. And it appearing to the undersigned District Judge that there is danger of irreparable injury being caused to the complainant before the hearing of said application for this preliminary writ of injunction can be had, unless defendants are, pending such hearing, restrained as hereinafter set forth;

Therefore, complainant's application for such restraining order is granted upon its giving bond with good and sufficient surety, to be approved by the Clerk of this Court in the penal sum of $10,000.00, securing the said defendants against all loss or damage which may result from the issue of said order, if it should be finally determined that the same was improperly issued, or that it may award to them by reason of the granting of said order.

Now, therefore, it is ordered that the Mississippi Railroad Commission, F. M. Sheppard, President and member of the said Commission, George R. Edwards and W. B. Wilson, members of

said Commission, and Ross A. Collins, Attorney General of Mississippi, be and they are hereby specially restrained and enjoined until further order of this Court, from enforcing or taking any steps to enforce compliance by complainant with any of those six orders issued by the said Commission on October 7th, 1914, directing complainant to operate certain passenger trains numbered 7, 8, 9, 10, 11 and 12; further restraining and enjoining all of said defendants and their attorneys and agents and all other parties from taking any steps to collect from complainant any of the penalties provided in any of said orders.

It is further ordered that a copy of this order, certified under the hand of the Clerk and seal of the Court, be served on each of the defendants to be restrained hereby, and that copies of this order duly certified under the hand of the Clerk and the State of Mississippi, and that the hearing of this cause on an application for an interlocutory injunction be had and proceeded with in accordance with Section 266 of the Judicial Code of the United States as amended by the Act of Congress approved March 14, 1913.

Dated at Aberdeen, Miss., Eastern Division of the Northern District of Mississippi, this the 8th day of October, 1914.

H. C. NILES,
Judge of the United States District Court for the Southern District of Mississippi.

United States of America,
Southern District of Mississippi.

I, L. B. Moseley, Clerk of the District Court of the United States for said District, do hereby certify the foregoing to be a true copy of the original order, issued in the foregoing styled case.

Witness my signature and seal of said Court, this 9th day of October, 1914.

L. B. MOSELEY, Clerk.

The following appears on the back:

M. & O. R. R. Co. vs. Miss. R. R. Coms. Restraining order and notice of hearing of motion for an interlocutory injunction. Filed Oct. 9th, 1914. L. B. Moseley, Clerk.

U. S. Marshal's return on this Restraining Order:

Received in office at Jackson, Miss., this October 9th, 1914. Executed by handing a true copy of this writ to James Galceran, Secretary of the Mississippi Railroad Commission; Ross A. Collins, Attorney General; Earl Brewer, Governor, at Jackson, Miss., this 9th day of October, 1914.

JOHN G. CASHMAN, U. S. M.
By C. B. Freeny, D. M.

Executed by handing a true copy of this writ to F. M. Sheppard at Beaumont, Miss., this October 12, 1914.

JOHN G. CASHMAN, U. S. M.
By J. D. MONEY, D. M.

IN THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF MISSISSIPPI AT JACKSON, MISSISSIPPI.

The Mobile & Ohio Railroad Company, Complainant,
vs. In Equity.
Mississippi Railroad Commission, et al, Defendant.

Know all men by these presents, that the Mobile & Ohio Railroad Company, a corporation organized under the laws of the State of Alabama, as principal, and The United States Fidelity and Guaranty Co., as surety, are jointly and severally held and firmly bound to L. B. Moseley, the Clerk of the above entitled Court, and his successors in the office for the use and benefit of whom it may concern in the full sum of $10,000.00, the payment whereof well and truly to be made, the above bound principal and surety bind themselves, their successors and assigns firmly by these presents.

In witness whereof, they have caused this instrument to be duly signed on this, the eighth day of October, 1914.

The condition of the foregoing obligation is such that, whereas, a temporary restraining order was issued in this cause on the 8th day of October, 1914, by the Honorable Judge of this Court, restraining the Mississippi Railroad Commission and F. M. Sheppard, President and member of the said Commission, and George R. Edwards and W. B. Wilson, members of said Com-

mission, and Ross A. Collins, Attorney General of the State of Mississippi, from enforcing or taking any steps to enforce compliance with those certain six orders of the Railroad Commission of Mississippi issued October 7th, 1914, requiring the Mobile & Ohio Railroad Company to operate, respectively, certain daily passenger trains numbered 7, 8, 9, 10, 11 and 12 and further enjoining and restraining all said defendants and their attorneys and agents and all other parties from taking any steps to collect the penalties provided in any of said six orders until the hearing of an application for an interlocutory injunction in said cause.

Now therefore, if the complainant, the Mobile & Ohio Railroad Company, shall well and truly pay, satisfy and discharge any and all judgments or decrees which may be reached against it for damages and costs or otherwise for the wrongful suing out and issuing of said temporary restraining order, then this obligation shall be void; otherwise, to remain in full force and virtue.

MOBILE & OHIO RAILROAD COMPANY,
By S. R. PRINCE, General Counsel.
THE UNITED STATES FIDELITY & GUARANTY CO.,
By C. L. TUBB, Its Agent and Attorney in Fact.
Approved this 9th day of October, 1914.
L. B. MOSELEY, Clerk.

The following appears on the back:

M. & O. R. R. Co. vs. Miss. R. R. Coms. Bond. Filed October 9th, 1914. L. B. Moseley, Clerk.

IN THE UNITED STATES DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

Mobile & Ohio Railroad Company
vs. In Equity. No. 21.
Mississippi Railroad Commission, et al.

ANSWER OF THE DEFENDANTS TO THE BILL OF COMPLAINT.

And now comes the Mississippi Railroad Commission, F. M. Sheppard, President thereof, and George R. Edwards and E. B. Wilson, members of said Commission, and Ross A. Collins, Attorney General of the State of Mississippi, and reserving the rights

of exception to the many errors and imperfections in the said bill contained and answering so much and such parts thereof as they are advised is material for them to answer, answering jointly and severally, say:

They deny that the Mobile & Ohio Railroad Company doing business in the State of Mississippi is a corporation under the laws of the State of Alabama, but show that it is a corporation under the laws of the State of Mississippi; but they admit that the complainant owns lines running from Mobile, in the State of Alabama, through the States of Alabama, Mississippi, Tennessee, Kentucky and Illinois, to St. Louis, in the State of Missouri.

They admit that the defendants named as members of the Mississippi Railroad Commission are such and that their residences are as alleged in the bill; they admit that Ross A. Collins is the Attorney General of Mississippi and that his office is at Jackson, Mississippi, in the Southern District of Mississippi.

II.

They deny that the matters in controversy in this suit are proper questions arising under the Constitution and laws of the United States, but show, on the contrary, that no proper Federal question arises under the bill. They also deny that the sum in controversy exceeds the value of $3,000.00, exclusive of interest and costs, but show that the action is not one involving a consideration of that kind, but is only a suit to prevent compliance with the orders of the Mississippi Railroad Commission.

III.

The defendants deny that the revenues of the complainant have decreased to such an extent as to require it to refuse to comply with the orders of the Railroad Commission hereinafter referred to. They admit that the Vice-President and Manager of the complainant requested the Mississippi Railroad Commission to call a meeting of the Commission at Jackson, Mississippi, on the 15th day of September, and they admit that they did so and that the said Manager appeared before the Commission and made application for permission to take off the trains mentioned in this suit, but they deny that they were unable to make any suggestions, but show that at said time they were not fully advised as to the condition of complainant's business and finances taken as a whole and that it was necessary, before passing on

said request, for them to look into the said matter; but they show that they did not give the complainant any permission to take off said trains or any of them. They admit that they took the matter under advisement and so informed the General Manager at said time and that he went away and proceeded to give notice that he would discontinue said trains, not waiting for the action of the Commission in said premises.

They admit that the complainant was about to discontinue the said trains in accordance with said notice and that an injunction was secured by the Attorney General of Mississippi in the Chancery Court of Lauderdale County, Mississippi, requiring them to continue the operation of special trains, which they did until the 5th day of October, 1914, on which date the Chancery Court entered an order dismissing the bill of the Attorney General, and the Attorney General at said time prayed and was allowed an appeal to the Supreme Court at the present term thereof, where the suit is now pending and undetermined by the said Supreme Court, and that the said suit involves practically the same questions that are involved in the present suit, but they admit that the complainant discontinued the said trains on the 5th day of October, 1914, and have not since operated them.

IV.

They admit that on the 21st day of September, 1914, the Mississippi Railroad Commission caused a citation to be issued to the complainant requiring it to appear before the Commission at Jackson, Mississippi, on the 7th day of October, 1914, to show cause, if any, why it should not be required to continue to operate between Corinth, Mississippi, and State Line, Mississippi, the passenger trains numbered 7, 8, 9 10, 11 and 12, which were the trains involved in the suit now pending in the Supreme Court of Mississippi and which had been taken off, or threatened to be taken off by the complainant. They admit that the complainant appeared before the Commission and protested against the orders complained of in the bill, and they also admit and state that the Commission heard the matter, hearing evidence from both the complainant and on behalf of various citizens and organizations interested in and affected by said orders; that the evidence in such hearing was conflicting but after full hearing, the Commission found as a fact that the complainant

should continue the operation of said trains and that the same were necessary to secure to the public the conveniences and accommodations which the complainant owed the public by virtue of its charter and public character, and by virtue of the laws of the State of Mississippi. They further state that at said hearing, their action was justified by the evidence presented and that they discharged their duties as they understood it under the evidence and the law bearing thereon, and they admit that the orders made Exhibits to the bill are copies of the minutes of the Mississippi Railroad Commission.

V.

The defendants deny that the complainant suffered many severe losses in business during the fiscal year ending June 30th, 1914, so far as the operation of its railroad business was concerned, but they admit that the complainant had heavy losses due to improvident contracts and the careless and negligent operation of its trains, said losses being occasioned by wrecks resulting in loss of property and life which cost the company large sums of money to settle and dispose of, and that it also had losses due to unforeseen flood conditions. They deny that the war conditions in Europe have very materially affected the business of the complainant and show that only a small part of the business handled by the complainant was business that was shipped and handled in foreign commerce, and they show that the losses, if any, are not more severe on the railroad company than it is upon the general public owing to any business depression in the country occasioned by the war in Europe. They deny that the complainant lost the amount of money that they claim in the bill for the period of time therein mentioned as corresponding with similar periods for former years, and show, in this respect, that the loss in this business or the volume of such business varies greatly in one year as compared to another in normal times, and especially is that true with reference to the months and shorter periods of time. They deny that the losses, if any, accruing to the complainant, were occasioned by the loss of business in Mississippi on the passenger tariff, and they show in this respect that the travel in Mississippi upon the line of the complainant's road is practically as heavy now as at any time during the history and life of the railroad and such slight differ-

ences as may be noted as compared to a particular year will be found in other years when compared to the same period of time, and they show that there is not such a falling off of business and income from the operation of the trains mentioned as would justify such a sweeping reduction in the passenger service in Mississippi. They show that the taking off of the trains will very materially injure the towns, cities and country through which this line passes. They show that at numerous points business had adjusted itself with reference to railroads and schedules so that a large part of the business going into the leading cities along the line of the complainant depends upon reasonable passenger facilities and if such facilities are withdrawn that it will demoralize business along said line so as to make conditions much more unfortunate than they now are, and that if the same policy is pursued with other railroads and public utilities, that it will cause a financial panic of greater proportions and more disastrous consequences than any that have occurred in the past.

The defendants show that they have not been fully advised as to what economies have been determined on by the complainant, but they say, upon information and belief, that there is no reason to believe that conditions will not adjust themselves within a short time and that the business of the complainant will again become normal. They deny that the necessity for the action taken by the complainant in taking off said trains was not absolute but that conditions as to passenger traffic in Mississippi are not materially different now than they were at the time the said passenger trains were placed in operation, and in this respect they show that the operation of the passenger trains results in an increased business between the citizens of the different sections of the State living along said line, and that one of the results of having a good passenger schedule with ample accommodations is to materially increase the freight shipments along the line of the complainant due to the increase of trade brought about by reasonable accommodations.

The defendants, in further answer to the allegations of this paragraph, say that at all times they have been willing and are now willing to agree with the complainant upon reasonable passenger facilities between Mississippi points, but that when it has been suggested to the management of the complainant that they agree to furnish a portion of the facilities which they have

withdrawn, the offer has been spurned and the management of the complainant will not consent to any modification or change of his views and contends that the officers of the road alone are the judges of what facilities the public needs and should have. They show that complainant is forgetful of the fact that it is under duty to run the road in the interest of the public as well as in the interest of its stockholders, and they show, in further answer to this paragraph, that the Mobile & Ohio Railroad Company has for many years past been managed and that a majority of its stock has been held by the Southern Railway Company, a corporation under the laws of Virginia, and that said Southern Railway Company has charged the Mobile & Ohio Railroad Company with certain expenses incident to the operation of other lines. The defendants, upon information and belief, charge that the Mobile & Ohio Railroad Company has been taxed by the Southern Railway Company with a part of the expense of operating and maintaining the expenses of the terminal company at New Orleans, Louisiana, which property should only be chargeable to the New Orleans & Northeastern Railroad Company, which is also controlled by the Southern Railway Company or some of its subsidiary corporations. Upon information and belief, they state that the Southern Railway Company so manipulates the business of the Mobile & Ohio Railroad Company as to divert the profits from the Mobile & Ohio Railroad Company to the Southern Railway Company and that the Southern Railway Company controls, in addition to its own lines, the Southern Railway Company in Mississippi, the Alabama & Vicksburg Railroad Company in Mississippi and the New Orleans & Northeastern Railroad Company in Mississippi, and that the Mobile & Ohio Railroad Company, as a practical proposition, only constitutes a portion of the system controlled by the Southern Railway Company, and that the Southern Railway Company, as a whole, is making money even under present conditions and has for many years enjoyed good business and prosperity.

The defendants further state, upon information and belief, that the Southern Railway Company and other railroad systems in the South are reducing facilities and withdrawing accommodations so as to create an impression for a necessity of an increase in its freight rates and that unless they can get the public

impressed with the idea that they are losing money, it will be impossible to get a raise of such rates. The defendants say that they have not access to the books and accounts of the Mobile & Ohio Railroad Company and of the Southern Railway Company and that th[illegible]lieve that an examination of such reports will show to t[illegible]action of the Court that there is no necessity for the w[illegible]al of the facilities which have been withdrawn by the Mobile & Ohio Railroad Company and that it can successfully defend this suit if it is permitted to have access to such books of the Mobile & Ohio Railroad Company and its owner, the Southern Railway Company, so as to show fully how the business is managed and handled to the end that profits have been diverted from the Mobile & Ohio to the Southern Railway Company.

VI.

The defendants deny that the trains mentioned in the bill did not pay anything above the cost of operating and maintaining them and show, in this respect, that many items are charged against the said trains by the complainant as its operating expenses which had no connection with the operation of said trains and that when taken with their earnings as compared to the expenses, that the trains have been profitable, but they show that the complainant could make great profit by reducing the trains, even though they are paying operating expenses and a reasonable sum above the cost of operation.

Defendants admit that the trains were put on originally as stated in the bill, and say, upon information and belief, that if the train put on on the 7th day of November, 1909, had not paid operating expenses, the trains would not have been put on as additional trains on November 26th, 1911, and July 20th, 1913. They admit that the trains were put on by the complainant in answer to a clamor from the citizens along its line at Meridian and elsewhere, but they deny that they would not pay when put on. They deny the allegation that there is no legal right in the public or the State to require the operation of a train at a loss so far as the particular train is concerned where the public accommodation requires such trains to be operated, and they deny that the operation of a train for a limited period of time at a loss is confiscation of the property of the [illegible]plainant

or that it is a denial of due process of law or of equal protection of the law within the meaning of the Constitution of the United States. In this respect, they show that all railroad systems must necessarily operate a portion of the time at a loss and must operate some facilities at a permanent loss in order to operate the system at a profit with effect. They show further that where a party accepts a franchise from the State of a Railroad Company that they must carry out their contract with the State even though a portion of the time they operate at a loss, and that it is absolutely impossible to run each train and each branch of service at a profit all the time and still render the public the service demanded by the nature of the powers conferred by their charters.

VII.

In reference to the allegations of this paragraph, the defendants deem most of them immaterial, but they deny the allegation contained that in reality the trains which have been discontinued are the through and interstate trains, and show that the making of the interstate trains also local trains on the schedule set forth does not afford the public reasonable facilities of travel and is not a compliance with the charter conditions of the company's charter, and they deny further that all persons, under the new schedules, can travel on the remaining trains with slight inconvenience to them, but show that the inconvenience is very great and that it is impossible, in many cases, to make the trips at all, and they deny the allegation that the trains which they now operate under the new schedule are adequate and furnish reasonable service under conditions existing at this time and which will probably exist in the near future. They deny the allegation that even if the people of Mississippi are inconvenienced by the discontinuance of the trains that it is only an inconvenience and could only cause a trifling loss to any one, but show, on the contrary, that the inconvenience is great and that the loss occasioned to a large per cent of the traveling public is great growing out of the increased rates and of delay and loss of time incident to the lack of facilities, and they deny that the order is void for unreasonableness and that it deprives the complainant of equal protection of law and deprives it of its property without due process of law.

VIII.

Complainant is unable to either affirm or deny that the economies which the complainant is preparing to adopt and has adopted will bear more or less heavily upon individuals and employes, or not, because they are unadvised as to the scope, nature and extent of said economies, but they deny that if the power lodged in the Commission to make them operate reasonable facilities is exercised that the ability of the complainant to serve the public will be seriously impaired, and they deny that such act of the Commission would be contrary to the due process of law clause or the equal protection clause of the Constitution of the United States or of the State of Mississippi.

IX.

Defendants deny that the complainant is a post road within the meaning of the Constitution of the United States on that subject of the United States, but admit that the complainant contracts with the Government of the United States to carry mails and troops in interstate commerce, and they admit that as a part of the contract with the Government of the United States by which the Government donated large sections of the public domain to such corporation that the corporation must carry the troops and munitions of war for the United States Government without charge, but they deny that this in any manner prevents the regulation imposed in this case because the complainants are not required to carry the mails or other property of the United States on trains required to be operated under the several orders of the Commission mentioned in the bill of complaint, and they deny that the operation of such trains will in any manner interfere with interstate commerce, and in this respect they state that the complainant owes a duty to he people of Mississippi or the Government of Mississippi no less binding in its nature than its obligations to the United States Government.

X.

They deny the allegation that the Railroad Commission has not power to regulate the number of trains run by railroads, and in answer to this part of the bill, they state that under Chapter 139, of the Code of Mississippi and amendments thereto, that the Commission has been given very large and full powers generally to regulate any and all kinds of questions that grow out

of the relation of the public to the railroad companies. They have express power to regulate schedules under Section 4849 and may require the company to make its trains arrive and depart at such times as may best serve the public interest, and under Section 4860, of the Code of 1906, they have express power to require railroad companies to furnish a sufficient number of passenger cars and to prescribe the kind, etc., that they shall furnish to the traveling public, and when you take the schedule with the number of trains, or cars, that may be required, you have power to control fully except as to the employes and the motor power that may be used in propelling the cars. The chapter referred to and the amendments thereto cover practically every question that can arise in the operation and control of railroad business, and a study of the chapter will show and demonstrate that the State of Mississippi makes itself the final arbiter of those questions in so far as intrastate business is concerned. They admit that the Commission and the Attorney General are empowered to bring suits in the courts for penalties for violations of law or the orders of the Commission, and they show that the Commission has authority to resort to the courts for aid in enforcing its orders, and that under the law, the Attorney General is qualified to bring these suits for and on behalf of the Railroad Commission.

The defendants show that they have not prepared to bring any suit in reference to the matter and that such action had not become necessary prior to the injunction sued out herein; that the suit now pending in the Supreme Court of Mississippi wherein the Attorney General is appellant and the Mobile & Ohio Railroad Company appellee hereinbefore referred to, will decide the principles involved in this suit and will involve a construction of the laws of Mississippi bearing on most of the questions at issue in this suit, but they admit that if the State Supreme Court decides said suit favorable to the Attorney General that it is and was the purpose of the Attorney General to proceed with said suit to compel the complainant to discharge its duty to the public and that he will adopt whatever legal procedure that is deemed appropriate in case he is not enjoined from so doing.

In respect to the said suit, he shows that this Court cannot enjoin his action therein, because it is a suit by the State in its

sovereign capacity against the complainant in this suit, and that the Federal Courts have not authority or power to enjoin him with reference thereto.

XI.

The defendants deny that the orders of the Commission fixing the termini of said trains are unreasonable, illegal and unwarranted interference with the management of the complainant's business, and they deny that the short distances which certain of said trains will operate will require the complainant to expend considerable sums each month in payment of wages to employes who have a contract for a minimum mileage, but show that said trains can easily be adjusted so as to make the said trips from Corinth to Waynesboro as to work no hardship on the complainant and to afford facilities to the public. They admit that but one citation was issued in this case, but say that it covered in the subject matter of all the trains and in this respect they show that the notice of the Railroad Commission is not a judicial process and the function exercised is not a judicial function, but is a legislative function under the delegated power of the Railroad Commission, and that the same notice is not required in matters before the Commission as in judicial hearings, and that the Court of the State of Mississippi and the United States Supreme Court have each decided that the Railroad Commission is not a judicial power but is an administrative agency of the Legislature.

Now, having answered the material allegations of the bill, defendants pray that their answer be made a cross-bill and that the Court will grant an order directing the Mobile & Ohio Railroad Company and Southern Railway Company, which operates and controls it in its own interest, to submit to the defendants or their authorized agents and accountants for examination, all books, accounts, letters, records and papers bearing on the business and operation of the Mobile & Ohio Railroad Company and of the Southern Railway Company and of the relations of one party to the other party, to the end that the truth may be known and justice done between the public and the complainant, and that on final hearing, that the Court will enter an order sustaining the orders of the Railroad Commission and directing the complainant to comply with the said orders either in whole or in part, as the facts proven after full hearing may show to be

just and lawful, and if mistaken in the relief prayed, that the Court will grant to the cross-complainants such other and further relief, both general and special, as the facts stated may warrant, and as in duty bound, the cross-complainants will ever pray, etc.

ROSS A. COLLINS, Atty. General,
By GEO. H. ETHRIDGE,
Assistant Attorney General.

CIRCUIT COURT OF THE UNITED STATES
For the
SOUTHERN DISTRICT OF MISSISSIPPI.
MOBILE & OHIO RAILROAD COMPANY, Plaintiff,
v.
THE MISSISSIPPI RAILROAD COMMISSION, ET AL., Defendants.

In Equity.

Affidavit of R. V. Taylor, Vice-President and General Manager, Mobile & Ohio Railroad Company, in Support of Bill and Motion for Interlocutory Injunction.

CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.
AT JACKSON, MISSISSIPPI.

Mobile & Ohio Railroad Company, Plaintiff,
v. In Equity.
The Mississippi Railroad Commission, et al., Defendants.

AFFIDAVIT OF R. V. TAYLOR.

Before me, Richard Pratt, a Notary Public for the County of Mobile, Alabama, appeared at Mobile, Alabama, in the Southern United States Judicial District of Alabama, R. V. Taylor, who, being duly sworn, on oath states:

My name is R. V. Taylor. I am Vice-President and General Manager of the Mobile & Ohio Railroad Co. I have had thirty-seven years' experience in nearly all branches of railroad work, having been for that length of time connected with the Mobile & Ohio Railroad Company in the several capacities of clerk in the Auditor's office, Chief Clerk in the Auditor's office, Auditor,

General Auditor. In 1904 I became General Manager of the Mobile & Ohio Railroad Company, and in 1911 became Vice-President of that Company. I am familiar with the capitalization of the Mobile & Ohio Railroad Company, and am the executive in direct charge of the operation of the Mobile & Ohio Railroad.

I gave an order effective September 28th, 1914, discontinuing M. & O. R. R. passenger trains known as Numbers 7, 8, 9 and 10, 11 and 12. From September the 28th to October 5th, special trains were operated on the former schedule of the said trains. These trains were operated because of an injunction issued by the Chancery Court of Lauderdale County, Mississippi, in a suit brought by the Attorney General of Mississippi, requiring this Company to continue said trains. On October the 5th, the injunction was dissolved and the said trains which had been run as special trains between September 28th and October 5th were discontinued, and are not now being operated. These trains were operated between points in Alabama and Mississippi, except those known as Nos. 11 and 12, which were operated between Meridian, Mississippi, and Okolona, Mississippi.

The M. & O. Railroad runs from Mobile, Alabama, through the States of Alabama, Mississippi Tennessee, Kentucky, Illinois and to Saint Louis, Missouri.

During the year ending June 30th, 1914, the M. & O. Railroad Company earned only $85,000.00 net revenue, that is, it had $85,000.00 left after paying cost of operation fixed charges and taxes and before making any allowance for a dividend or in any way providing for betterments or improvements to the property. The Company has earned in the past a fair amount of net revenue but it had not on hand any accumulated surplus, because all earnings over a small dividend , the highest in its history being five per cent, has been put back into the property.

The result of operation of this railroad for the months of July and August, 1914, showed that for July it earned a surplus over fixed charges and taxes of $11,000.00, and for August there was a deficit, after allowing for fixed charges and taxes, of $25,641.00, so that for the two months combined there was a deficit of $13,988.00. That is, this Company, lacked that much of earning sufficient money to pay the interest on its bonded indebtedness and equipment, trust obligations and taxes.

On August the 2d, the European war began, which caused a general business depression, particularly in the cotton territory served by this railroad. I received daily reports of the earnings of the Company, and realizing that they were falling off very largely, saw that there was an imperative need for immediate retrenchment. The duty I owed the property, the territory it served, its stockholders and bondholders, forced me (early in September, 1914,) to put into effect every reasonable economy. In the running of a railroad, just as with other business, the outgo must be kept within the income if it wants to live. I immediately began to investigate every department of expenditure in order to make the needed reduction.

It is difficult to rduce the operating expenses of a railroad. First of all, the railroad has contracts with its union labor which contracts cannot be broken, and under which the wages cannot be reduced immediately or without bringing on as great an evil as you seek to remedy.

Together with the officers of this Company, a plan of reduction of expenses was mapped out. I knew that the passenger business of the M. & O. Railroad as a whole barely paid expenses, and I knew that certain trains, including those above referred to, did not pay the cost of operation. This being true, and it being a fact that the passenger expenses do not fluctuate with the volume of business, made it necessary, if there was to be a reduction in the passenger expenses of the railroad, to take off these trains. As the tonnage decreases, the freight traffic expenses automatically reduce to fit the lesser volume of business; but with passenger train service, trains have to be run without regard to volume or number of passengers handled, and in consequence, if there is to be a reduction in passenger expenses it must be by reducing the number of trains operated. The matter was gone into very thoroughly, and we felt, and feel, that by making what were formerly through trains stop at all of the local stations then served by these trains to be taken off, that there would remain reasonably adequate service to the patrons of the line, considering the lessening volume of traffic and the circumstances which require the action to be taken.

Even if it were a fact that the trains taken off paid more than the cost of operation, if we could economize and still han-

dle a very large percentage of the business on the trains we would have left, I thought it a proper step of economy.

The management of this Company determined on many economies. We have taken off traveling firemen, tie inspectors, car tracers, inspectors of agencies, relief agents, general storekeeper's forces, clerks in various offices, yard-masters and their clerks, and we are enabled because of the reduction in business to reduce the repairs to steam locomotives, passenger train car repairs, coal chute labor, equipment repairs, telegraph operators; we have reduced as far as is consistent with safety the maintenance of the road department, and have closed certain shops. Among the first reductions was a material reduction in the pay of all general officers. The President, of his own initiative, reduced his salary twenty per cent. The Vice-President and General Manager, of his own initiative, reduced his salary twenty per cent. All other officers have been reduced on a sliding scale, no one greater than ten per cent.

Prior to taking off these trains, I asked and received from the Mississippi Railroad Commission a hearing in regard to the matter, and on September 15th, I appeared before the Commission, showed them the exact state of the finances of this Company and the absolute necessity for immediate action. I especially drew attention to the amount of taxes that we had to pay in the near future to the State of Mississippi, and that we had to have the funds to pay them with. I asked the Commission for suggestions as to what to do, but received no suggestions. They politely told me that they could not give me any assistance in that regard. I did not file a formal petition, but merely discussed the matter with them in order to get their approval. One member of the Commission offered a resolution to approve the proposed action, and another seconded that resolution. The third member suggested that they hold an executive session, and they promised to notify me of their action. I received no notice.

I presented like reasons and a like request to the Railroad Commission of Alabama, certain of the trains which were taken off running into that State, and I received from the Railroad Commission of Alabama, under date of September 22d, 1914, an order which read as follows:

"CHANGING SCHEDULE.

"This will confirm verbal permission granted by the Commission for the suspension of passenger trains on the Mobile & Ohio Railroad as follows: Nos. 7, 8, 9 and 10, between Mobile and Meridian, and Nos. 111 and 112, between Tuscaloosa and Artesia.

(Signed) "S. P. KENNEDY, Secretary."

I have had no complaint from the States of Tennessee, Kentucky or Illinois. This Company has not discriminated against passenger service in making the needed reduction in expenses. It has not discriminated against the State of Mississippi in discontinuing said trains. The passenger service now provided for the State of Mississippi is the maximum service given any State through which this line runs. On the main line of the M. & O. Railroad in the State of Alabama, there are two trains per day each way. Within the State of Mississippi, south of Meridian, there are two trains each way per day, and north of Meridian, three trains each way per day. Within the State of Tennessee, there are three trains operating on a part of the line in Tennessee. In Kentucky, there are two trains each way per day. In Illinois, for a distance of 62.6 miles, there are two trains operated per day, and north of Murphysboro to St. Louis, there are three trains per day each way. These are the passenger facilities now afforded, notwithstanding the fact that the density of the population in the State of Illinois, through which this road operates, is 106.82 persons per square mile. In the State of Alabama, 44.25; in the State of Tennessee, 54.09; in the State of Kentucky, 58.05, and in the State of Mississippi, 41.02. The fact is, that Mississippi has received better treatment than any other part of the line.

To explain the immediate cash necessity of the Company, as was testified to before the Railroad Commission of Mississippi at the hearing, in response to their citation to show cause why these trains should not be reinstated, the cash statement for this Company for September 30th, 1914, showed that the Treasurer had cash on hand $74,885.00 and had on hand audited approved vouchers awaiting payment aggregating $1,027,000. These vouchers, some of which ran back as far as November, 1913, covered bills for material, supplies, and other ordinary

debts due from this Company, and did not include anything like interest on bonded debt. And notwithstanding this status of the actual cash, this Company has to pay by the 1st of December, to the State of Mississippi, $176,000 in taxes, in round figures. On October 10th the actual working or cash balance was $185,000 and the audited approved voucher was $980,000. On October the 20th, the actual working balance was $56,000 and the amount of audited approved vouchers on hand awaiting payment was $919,000. The reduction in cash balance is due to meeting semi-monthly pay checks. The falling off in the earnings of this Company for the first seventeen days in October as compared with the like number of days in October last year shows a decrease in the general earnings of $165,742, or approximately $10,000 per day. Of this, the passenger decrease was $14,716, and since for the year 1914, the passenger earnings were twelve per cent of the whole, the showing is that the falling off in the passenger revenue has not been quite as great as the falling off in the freight revenue.

Th reduction made in passenger expenses as compared with the falling off in passenger revenue has not been as great as the reduction made in freight expenses as compared with the falling off in freight revenues.

I calculated, or estimated, that by taking off these trains this Company would make a direct, immediate saving in expenses of $10,000 per month, and if the trains are required to be operated, since a very large percent of the passengers formerly handled on the trains still left on, the loss to the Company would be approximately $10,000 per month. I arrived at this figure by calculating the actual direct expense of these trains, such as pay of enginemen, trainmen, enginehouse expenses, fuel, water, locomotive or engine supplies, train supplies and expenses, and other immediate direct expenses, which aggregate forty cents per train mile. These trains travelled 24,640 train miles per month and multiplying that figure by the 40c per train mile, I arrived at the figure of $10,000. This does not include the indirect saving which comes from maintenance of equipment, supervision thereof, expense of repairing locomotives and passenger cars, maintenence of track, saving in the dispatching of trains, personal injuries, stock killed, station expenses, yard expenses, maintenence and operation of joint facil-

ities such as union stations, and a part of the entire general expense not easily divisible but applicable to both passenger and freight traffic.

The passenger business of the Mobile & Ohio Railroad Company does not, as a whole, pay. The passenger revenue per passenger train mile on the Mobile & Ohio Railroad for the year ending June 30th, 1914, was $0.98 per train mile. The passenger earnings of other roads in this territory per passenger train mile are greater. For instance, that of the C. N. O. and T. P. Ry. for 1913, was $1.36, the A. G. S. $1.38, N. O. & N. E. $1.35, N. C. & St. L. $1.27, A. & V. $1.39, V. S. & P. $1.57, I. C. $1.12, Southern Railway $1.19, L. & N. $1.42.

There is now a more frequent and better train service than was ever in effect on the M. & O. Railroad prior to November 7th, 1909. On November 7th, 1909, the trains Nos. 7 and 8, which have been taken off, were put on. On November 26th, 1911, trains Nos. 9 and 10 were put on. On July 20th, 1913, trains Nos. 11 and 12 were put on. These trains were put in operation not under order of any Railroad Commission of any State, but at the request of the business men of several communities, and they were put on as an experiment in an effort to build up the passenger business. The passenger business on the Mobile & Ohio Railroad has not increased in the same ratio as has its freight business. Between 1905 and 1914, the freight earnings have increased 79.91 per cent, whereas the passenger earnings have increased only 22 per cent. The particular trains taken off have never, any of them, paid its total cost of operation. In my opinion, considering the character of these trains, the equipment, length of run, etc., the cost would be approximately $1.00 per passenger train mile. There are a number of expenses connected with the passenger train service which can be separated from the general expenses which are common to both kinds of service, and it is impossible to do more than arrive at an estimate of the proper division of such common expenses upon some recognized basis.

I have carefully gone over the statements compiled by the Auditor of the Company, to which he has made oath, and in my opinion, these statements correctly and truly represent the expenses of the operation of passenger trains per passenger train mile on the Mobile & Ohio Railroad.

The earnings of each of these trains which has been taken off shows a considerable decrease in September over July and August, and for the five days in October which they were operated, the decrease in earnings of the trains was very great.

This Company would have been justified, according to the earnings of these trains, in taking them off prior to the general business depression felt by this Company along with other business generally, because we gave the trains a fair and honest trial for many a month and they did not pay.

The train service that is now effective in the State of Mississippi gives to the patrons of this Company three trains each way south of Meridian, Mississippi, where there were four trains under the old schedule, and it gives two each way south of Meridian, where there were formerly four each way. The trains Nos. 1, 2, 3 and 4, on the Mobile & Ohio Railroad Company, which served the State of Mississippi under the former schedule were fast trains and made few stops. When trains numbered 7, 8, 9, 10, 11 and 12 were taken off the fast trains were made local trains and under the new schedule they stop at all points except one train which does not stop at a place called Basic City and a place called Okatibbee, which places are not incorporated towns and have not any passenger business to amount to anything at all. To explain the idea of the management, I will say that formerly train No. 4, which is a north-bound train, made only seven stops between Meridian and Okolona, and now it makes twenty-two. The other through trains were changed in the same way from through trains to local trains.

These trains were not taken off to make up any loss being sustained on the business of the Company as a whole. They were taken off because they did not themselves pay the cost of operation and because, due to the falling off in the business of the Company as a whole, there was no general revenue out of which this Company could, during this depression, make up the deficit of these trains as it has in the past.

The recognized method of reducing passenger train expenses on all well regulated railroads is to discontinue the operation of certain of the trains, and in this crisis in railroad management many railroads besides the M. & O. R. R. Co. have taken off trains; for instance, the Pennsylvania Railroad issued an

order several weeks ago discontinuing the operation of sixty-six passenger trains in one day.

The affairs of the Mobile & Ohio Railroad Company have been economically managed, and the present crisis is not due to any wastefulness or extravagance on the part of the management. It is, in my opinion, due to the lack of business. The backbone of this Company's traffic is composed of lumber and cotton, and the resulting movement of general freight due to these two commodities being marketed at a profit. In former years, the month of October was the heaviest cotton-moving month. This year there is practically no cotton moving at all. The price of cotton is exceedingly low and even at the low price there is no market. The price of lumber is very low and the lumber market is demoralized to such an extent that it is not moving in any volume.

This Company has never paid any excessive dividends. The greatest dividend in its history has been five per cent. The stock and bonds of the Company represent value received and this Company does not pay fixed charges on any fictitious indebtedness or any watered securities of any kind.

The Mobile & Ohio Railroad is operated as a whole through the States of Alabama, Mississippi, Tennessee, Kentucky and Illinois. Since the revenue of the Company in the State of Mississippi, as well as in other States, is falling off at the rate of $10,000 per day, if the management does not reduce its expenses, it is a question of serious doubt as to whether or not the railroad can continue to serve the public generally in the States through which it runs. Many employes have been released from the service, and many of those who have remained have had their compensation reduced. The curtailment has been general with regard to the different branches of the service and with regard to the different localities, cities and States, and notwithstanding the fact that the service that the people of the State of Mississippi receive is greater than that given any other State or locality, the State of Mississippi is the only State or community which has raised a complaint against the action taken.

A committee from the Cotton Exchange and Board of Trade of Meridian, Mississippi, the largest business center served by the trains which have been discontinued, came to Mobile and discussed this matter with me before the trains were discon-

tinued. The matter was fully explained in every detail. The result was that the committee, consisting of the Mayor and two business men, after they went home, made their report and the Secretary of the Board of Trade wrote me a letter, as follows:

Meridian, Miss., Sept. 28th, 1914.

Mr. R. V. Taylor,
V. P. & Gen'l. Mgr. M. & O. R. R.,
Mobile, Ala.

Dear Sir:

At a meeting of the Board of Trade and Cotton Exchange held last Friday, September 25th, a resolution was offered and carried, requesting the Secretary to write you and that it was the sense of the meeting that the report made by the committee who were appointed to visit you, had been accepted.

It is my privilege to extend to you the thanks of the Board of Trade and Cotton Exchange for the courtesies shown its committee and for your assurance that the trains would be reinstated at as early a date as possible, and that you would meet the Board of Trade and Cotton Exchange, about the 15th of October, to discuss the matter of reinstating the local trains which you had decided to discontinue.

Yours very truly,

(Signed) R. M. STRIPLIN, Secretary.

The order of the Railroad Commission directing that certain of these trains be operated between Meridian and Waynesboro, Miss., is unbusinesslike and will cost this company even proportionately more per mile than the ordinary operation of said trains under the old schedule, because the distance between these two points is fifty-two miles and even if the trains made a turn-around trip they would only travel 104 miles per day and the contracts which this Company has with its employes provide a minimum mileage per day and per trip, which minimum has to be paid for, regardless of the miles traveled, and is considerably in excess of the round trip mileage between Meridian and Waynesboro.

There are no facilities at the State lines between Mississippi and Tennessee and Alabama and between Mississippi and Tennessee for turning passenger trains and to provide them would cost a large amount of money.

The Mobile & Ohio Railroad Company is what is known as a "land-grant railroad" and it has contracts for the carriage of mail with the United States Government.

If this Company is required to reinstate the trains in Mississippi, there are more traffic reasons and business reasons why the trains should be reinstated in other States. If required to reinstate these trains in Mississippi, since the curtailment has to be made and expenses reduced, the economies necessary thereto will have to be placed as a burden on the traffic and operations generally or in some other State.

The Mobile & Ohio Railroad Company is not able, under the present status of the money market, to secure funds by the issuance of bonds or other securities. All of the economies put in, including the reduction in the passenger train service, are necessary to reduce its expenses to the level of its income, to say nothing of any amount over for the payment of its fixed charges and taxes.

R. V. TAYLOR.

Sworn to and subscribed before me, this 24th day of October, 1914.

(SEAL) (L. S.) RICHARD PRATT,
Notary Public, Mobile County, Ala.

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

Mobile & Ohio Railroad Company,

v. In Equity.

The Mississippi Railroad Commission, et al.

The following is the condensation of the testimony offered in evidence on the hearing of the motion of complainant for an interlocutory injunction, said motion being heard before Circuit Court Judges Pardee and Walker and District Judge Niles, at New Orleans, Louisiana, on the 27th day of October, 1914.

The complainant's evidence to sustain its motion for said interlocutory injunction was in substance as follows:

R. V. Taylor, being produced and duly sworn, the Court stated that it would accept his affidavit as his direct testimony. His affidavit is as follows:

My name is R. V. Taylor. I am Vice-President and General Manager of the Mobile & Ohio Railroad Company. I have had thirty-seven years' experience in nearly all branches of railroad work, having been for that length of time connected with the Mobile & Ohio Railroad Company in the several capacities of clerk in the Auditor's office, Chief Clerk in the Auditor's office, Auditor, General Auditor. In 1904, I became General Manager of the Mobile & Ohio Railroad Company, and in 1911 became Vice-President of that Company. I am familiar with the capitalization of the Mobile & Ohio Railroad Company, and am the executive in direct charge of the operation of the Mobile & Ohio Railroad.

I gave an order effective September 28th, 1914, discontinuing M. & O. R. R. passenger trains known as Numbers 7 and 8, 9, and 10, 11 and 12. From September 28th to October 5th, special trains were operated on the former schedule of the said trains. These trains were operated because of an injunction issued by the Chancery Court of Lauderdale County, Mississippi, in a suit brought by the Attorney General of Mississippi, requiring this Company to continue to operate said trains. On October 5th, the injunction was dissolved and the said trains which had been run as special trains between September 28th and October 5th were discontinued, and are not now being operated. These trains were operated between points in Alabama and Mississippi and between points in Mississippi and Tennessee, except those known as Nos. 11 and 12, which were operated between Meridian, Mississippi, and Okolona, Mississippi.

The M. & O. Railroad runs from Mobile, Alabama, through the States of Alabama, Mississippi, Tennessee, Kentucky, Illinois and to Saint Louis, Missouri.

During the year ending June 30th, 1914, the M. & O. Railroad Company earned only $85,000.00 net revenue, that is, it had $85,000.00 left after paying cost of operation, fixed charges and taxes and before making any allowance for a dividend or in any way providing for betterments or improvements to the property. The Company has earned in the past a fair amount of net revenue but it had not on hand any accumulated surplus, because all earnings over a small dividend, the highest in its history being five per cent, has been put back into the property.

The results of operation of this railroad for the months of July and August, 1914, showed that for July it earned a surplus over fixed charges and taxes of $11,000.00 and for August there was a deficit, after allowing for fixed charges and taxes, of $25,641.00, so that for the two months combined, there was a deficit of $13,988.00. That is, this Company lacked that much of earning sufficient money to pay the interest on its bonded indebtedness and equipment trust obligations and taxes.

On August 2nd, the European war began, which caused a general business depression, particularly in the cotton territory served by this railroad. I received daily reports of the earnings of the Company, and realizing that they were falling off very largely, saw that there was an imperative need for immediate retrenchment. The duty I owed the property, the territory it served, its stockholders and bondholders forced me (early in September, 1914,) to put into effect every reasonable economy. In the running of a railroad, just as with any other business, the outgo must be kept within the income if it wants to live. I immediately began to investigate every department of expenditure in order to make the needed reduction.

It is difficult to reduce the operating expenses of a railroad. First of all, the railroad has contracts with its union labor which contracts cannot be broken, and under which the wages cannot be reduced immediately or without bringing on as great an evil as you seek to remedy.

Together with the officers of this Company, a plan of reduction of expenses was mapped out. I knew that the passenger business of the M. & O. Railroad as a whole barely paid expenses and I knew that certain trains, including those above referred to, did not pay the cost of operation. This being true, and it being a fact that the passenger expenses do not fluctuate with the volume of business, made it necessary, if there was to be a reduction in the passenger expenses of the railroad, to take off these trains. As the tonnage decreases, the freight traffic expenses automatically reduce to fit the lesser volume of business; but with passenger train service, trains have to be run without regard to volume or number of passengers handled, and in consequence, if there is to be reduction in passenger expenses, it must be by reducing the number of trains operated. The matter was gone into very thoroughly, and we felt, and feel, that

by making what were formerly through trains stop at all of the local stations then served by these trains to be taken off, that there would remain reasonably adequate service to the patrons of the line, considering the lessening volume of traffic and the circumstances which required the action to be taken.

Even if it were a fact that the trains taken off paid more than the cost of operation, if we could economize and still handle a very large percentage of the business on the trains we would have left, I thought it a proper step of economy.

The management of this Company determined on many other economies. We have taken off traveling firemen, tie inspectors, car tracers, inspectors of agencies, relief agents, general store-keeper's forces, clerks in the various offices, yard-masters and their clerks, and we were enabled because of the reduction in business to reduce the repairs to steam locomotives, passenger train car repairs, coal chute labor, equipment repairs, telegraph operators; we have reduced as far as consistent with safety the maintenance of road department, and have closed certain shops. Among the first reductions was a material reduction in the pay of all general officers. The President, of his own initiative, reduced his salary twenty per cent. The Vice-President and General Manager, of his own initiative, reduced his salary twenty per cent. All other officers have been reduced on a sliding scale, no one greater than ten per cent.

Prior to taking off these trains, I asked and received from the Mississippi Railroad Commission a hearing in regard to the matter, and on September 15th, I appeared before the Commission, showed them the exact state of the finances of this Company and the absolute necessity for immediate action. I especially drew attention to the amount of taxes that we had to pay in the near future to the State of Mississippi, and that we had to have the funds to pay them with. I asked the Commission for suggestions as to what to do, but received no suggestions. They politely told me that they could not give me any assistance in that regard. I did not file a formal petition, but merely discussed the matter with them in order to get their approval. One member of the Commission offered a resolution to approve the proposed action, and another seconded that resolution. The third member suggested that they hold an executive session, and they promised to notify me of their action. I received no notice.

I presented like reasons and a like request to the Railroad Commission of Alabama, certain of the trains which were taken off running into that State, and I received from the Railroad Commission of Alabama, under date of September 22nd, 1914, an order which read as follows

"Changing Schedule.

"This will confirm verbal permission granted by the Commission for the suspension of passenger trains on the Mobile & Ohio Railroad as follows: Nos. 7, 8, 9, and 10, between Mobile and Meridian, and Nos. 111 and 112, between Tuscaloosa and Artesia.

(Signed) "S. P. KENNEDY, Secretary."

I have had no complaint from the States of Tennessee, Kentucky or Illinois. This Company has not discriminated against the passenger service in making the needed reduction in expenses. It has not discriminated against the State of Mississippi in discontinuing said trains. The passenger service now provided for the State of Mississippi is the maximum service given any State through which this line runs. On the main line of the M. & O. Railroad in the State of Alabama, there are two trains each way per day. Within the State of Mississippi, south of Meridian, there are two trains each way per day, and north of Meridian, three trains each way per day. Within the State of Tennessee, there are three trains operating on a part of the line in Tennessee. In Kentucky, there are two trains each way per day. In Illinois, for a distance of 62.6 miles, there are two trains operated per day, and north of Murphysboro to St. Louis, there are three trains per day each way. These are the passenger facilities now afforded, notwithstanding the fact that the density of population in the State of Illinois through which this road operates is 106.82 persons per square mile. In the State of Alabama, 44.25; in the State of Tennessee, 54.09; in the State of Kentucky, 58.05, and in the State of Mississippi 41.02. The fact is, that Mississippi has received better treatment than any other part of the line.

To explain the immediate cash necessity of the Company as was testified to before the Railroad Commission of Mississippi at the hearing, in response to their citation to show cause why these

trains should not be reinstated, the cash statement for this Company for September 30th, 1914, showed that the Treasurer had cash on hand $74,885.00 and had on hand audited approved vouchers awaiting payment aggregating $1,027,000. These vouchers, some of which ran back as far as November, 1913, covered bills for material, supplies, and other ordinary debts due from this Company, and did not include anything like interest on bonded debt. And notwithstanding this status of the actual cash, this Company has to pay by December 1st, to the State of Mississippi, $176,000 in taxes, in round figures. On October 10th, the actual working or cash balance was $185,000 and the audited approved vouchers was $980,000. On October 20th, the actual working balance was $56,000 and the amount of audited approved vouchers on hand awaiting payment was $919,000. The reduction in cash balance is due to meeting semi-monthly pay checks. The falling off in the earnings of this Company for the first seventeen days in October as compared with the like number of days in October last year shows a decrease in the general earnings of $165,742, or approximately $10,000 per day. Of this, the passenger decrease was $14,716, and since for the year 1914, the passenger earnings were twelve per cent of the whole, the showing is that the falling off in the passenger revenue has not been quite as great as the falling off in freight revenue.

The reduction made in passenger expenses as compared with the falling off in passenger revenue has not been as great as the reduction made in freight expenses as compared with the falling off in freight revenue.

I calculated or estimated that by taking off these trains, this Company would make a direct immediate saving in expenses of $10,000 per month, and if the trains are required to be operated, since a very large per cent of the passengers formerly handled on these trains are now handled on the trains still left on, the loss to the Company would be approximately $10,000 per month. I arrived at this figure by calculating the actual direct expense of these trains, such as pay of enginemen, trainmen, engine-house expenses, fuel, water, locomotive or engine supplies, train supplies and expenses, and other immediate direct expenses, which aggregate forty cents per train mile. These trains traveled 24,640 train miles per month, and

multiplying that figure by the 40c per train mile, I arrived at the figure of $10,000. This does not include the indirect saving which comes from maintenance of equipment, supervision thereof, expense of repairing locomotives and passenger cars, maintenance of track, saving in the dispatching of trains, personal injuries, stock killed, station expenses, yard expenses, maintenance and operation of joint facilities such as union stations, and a part of the entire general expense not easily divisible but applicable to both passenger and freight traffic.

The passenger business of the Mobile & Ohio Railroad Company does not, as a whole, pay. The passenger revenue per passenger train mile on the Mobile & Ohio Railroad for the year ending June 30th, 1914, was $.98 per train mile. The passenger earnings of other roads in this territory per passenger train mile are greater. For instance, that of the C. N. O. and T. P. Ry. for 1913 was $1.36, the A. G. S. $1.38, N. O. & N. E. $1.35, N. C. & St. L. $1.27, A. & V. $1.39, V. S. & P. $1.57, I. C. $1.12, Southern Railway $1.19, L. & N. $1.42.

There is now a more frequent and better train service than was ever in effect on the Mobile Ohio Railroad prior to November 7th, 1909. On November 7th, 1909, the trains Nos. 7 and 8, which have been taken off, were put on. On November 26th, 1911, trains Nos. 9 and 10 were put on. On July 20th, 1913, trains Nos. 11 and 12 were put on. These trains were put in operation not under order of any Railroad Commission of any State, but at the request of business men of several communities, and they were put on as an experiment in an effort to build up the passenger business. The passenger business on the Mobile & Ohio Railroad has not increased in the same ratio as has its freight business. Between 1905 and 1914, the freight earnings have increased 79.91 per cent, whereas the passenger earnings have increased only 22 per cent. The particular trains taken off have never, any one of them, paid its total cost of operation. In my opinion, considering the character of these trains, the equipment, length of run, etc., the cost would be approximately $1.00 per passenger train mile. There are a number of expenses connected with passenger train service which can be separated from the general expenses, but there are a number of expenses which are common to both kinds of ser-

vice, and it is impossible to do more than arrive at an estimate of the proper division of such common expenses upon some recognized basis.

I have carefully gone over the statements compiled by the Auditor of this Company, to which he has made oath, and in my opinion, these statements correctly and truly represent the expenses of the operation of passenger trains per passenger train mile on the Mobile & Ohio Railroad.

The earnings of each of these trains which has been taken off shows a considerable decrease in September over July and August, and for the five days in October which they were operated, the decrease in earnings of the trains was very great.

This Company would have been justified, according to the earnings of these trains, in taking them off prior to the general business depression felt by this Company along with other businesses generally, because we gave the trains a fair and honest trial for many months and they did not pay.

The train service that is now effective in the State of Mississippi gives to the patrons of this Company three trains each way north of Meridian, Mississippi where there were four trains under the old schedule, and it gives two each way south of Meridian, where there were formerly four each way. The trains Nos. 1, 2, 3, and 4, on the Mobile & Ohio Railroad Company, which served the State of Mississippi under the former schedule were fast trains and made few stops. When trains numbered 7, 8, 9, 10, 11 and 12 were taken off the fast trains were made local trains and under the new schedule they stop at all points except one train which does not stop at a place called Basic City and a place called Okatibbee, which places are not incorporated towns and have not any passenger business to amount to anything at all. To explain the idea of the management, I will say that formerly train No. 4, which is a north-bound train, made only seven stops between Meridian and Okolona and now it makes twenty-two. The other through trains were changed in the same way from through trains to local trains.

These trains were not taken off to make up any loss being sustained on the business of the Company as a whole. They were taken off because they did not themselves pay the cost of operation and because, due to the falling off of the business of the

Company as a whole, there was no general revenue out of which this Company could, during the depression, make up the deficit of these trains as it has in the past.

The recognized method of reducing passenger train expenses on all well regulated railroads is to discontinue the operation of certain of the trains, and in this crisis in railroad management many railroads besides the M. & O. R. R. Co. have taken off trains; for instance, the Pennsylvania Railroad issued an order several weeks ago discontinuing the operation of sixty-six passenger trains in one day .

The affairs of the Mobile & Ohio Railroad Company have been economically managed, and the present crisis is not due to any wastefulness or extravagance on the part of the management. It is, in my opinion, due to the lack of business. The backbone of this Company's traffic is composed of lumber and cotton, and the resulting movement of general freight due to these two commodities being marketed at a profit. In former years, the month of October was the heaviest cotton-moving month. This year there is practically no cotton moving at all. The price of cotton is exceedingly low and even at the low price there is no market. The price of lumber is very low and the lumber market is demoralized to such an extent that it is not moving in any volume.

This Company has never paid any excessive dividends. The greatest dividend in its history has been five per cent. The stock and bonds of the Company represent value received and this Company does not pay fixed charges on any fictitious indebtedness or any watered securities of any kind.

The Mobile & Ohio Railroad is operated as a whole through the States of Alabama, Mississippi, Tennessee, Kentucky and Illinois. Since the revenue of the Company in the State of Mississippi, as well as in the other States, is falling off at the rate of $10,000 per day, if the management does not reduce its expenses, it is a question of serious doubt as to whether or not the railroad can continue to serve the public generally in the States through which it runs. Many employes have been released from the service, and many of those that remain have had their compensation reduced. The curtailment has been general with regard to the different branches of the service and with regard to the different localities, cities and States, and notwithstanding the

fact that the service that the people of the State of Mississippi receive is greater than that given any other State or locality, the State of Mississippi is the only State or community which has raised a complaint against the action taken.

A committee from the Cotton Exchange and Board of Trade of Meridian, Mississippi, the largest business center served by the trains which have been discontinued, came to Mobile and discussed this matter with me before the trains were discontinued. The matter was fully explained in every detail. The result was that the committee, consisting of the Mayor and two business men, after they went home, made their report and the Secretary of the Board of Trade wrote me a letter under date of September 28th, which letter read as follows:

Meridian, Miss., Sept. 28, 1914.

Mr. R. V. Taylor,
V. P. & Gen'l. Mgr. M. & O. R. R.,
Mobile, Alabama.

Dear Sir:—

At a meeting of the Board of Trade and Cotton Exchange held last Friday, September 25th, a resolution was offered and carried, requesting the Secretary to write you that it was the sense of the meeting that the report made by the committee who were appointed to visit you, had been accepted.

It is my privilege to extend to you the thanks of the Board of Trade and Cotton Exchange for the courtesies shown its committee and for your assurance that the trains would be reinstated at as early a date as possible, and that you would meet the Board of Trade and Cotton Exchange about the 15th of October to discuss the matter of reinstalling the local trains which you had decided to discontinue.

Yours very truly,

(Signed) R. M. STRIPLIN, Secretary.

The order of the Railroad Commission directing that certain of these trains be operated between Meridian and Waynesboro, Mississippi, is unbusinesslike and will cost this Company even proportionately more per mile than the ordinary operation of said trains under the old schedule, because the distance between these two points is fifty-two miles and even if the trains made a

turn-around trip they would only travel 104 miles per day and the contracts that this Company has with its employes provides a minimum mileage per day and per trip, which minimum has to paid for, regardless of the miles traveled, and is considerably in excess of the round trip mileage between Meridian and Waynesboro.

There are no facilities at the State lines between Mississippi and Alabama and between Mississippi and Tennessee for turning passenger trains and to provide them would cost a large amount of money.

The Mobile & Ohio Railroad Company is what is known as a "land-grant railroad" and it has contracts for the carriage of mail with the United States Government.

If this Company is required to reinstate the trains in Mississippi, there are more traffic reasons and business reasons why the trains should be reinstated in other States. If required to reinstate these trains in Mississippi, since the curtailment has to be made and expenses reduced, the economies necessary thereto will have to be placed as a burden on the traffic and operations generally or in some other State.

The Mobile & Ohio Railroad Company is not able, under the present status of the money market, to secure funds by the issuance of bonds or other securities. All of the economies put in, including the reduction in the passenger train service, are necessary to reduce its expenses to the level of its income, to say nothing of any amount over for the payment of fixed charges and taxes.

CROSS-EXAMINATION OF R. V. TAYLOR, IN THE PRESENCE OF THE COURT.

The distance between Waynesboro, Mississippi, and Okolona, Mississippi, is 179 miles. It would require about seven hours to make the trip, including all stops. I have never tried to operate trains between those points. As to what important points there are between Waynesboro and Okolona, I consider them all important, but of different degree. Our through trains under the old schedule stopped at ten points between Waynesboro and Okolona. Prior to this period of depression we had labor contracts with different classes of employes. We have

made no effort to reduce the pay of organized labor; it would be an idle effort. I cannot give an exact statement of how much of the earnings that are stated in my affidavit have been earned in Mississippi, that is, between points wholly within Mississippi. I cannot separate that. I know in a general way that the Mississippi intrastate revenue is about ten per cent of the entire revenue of the line. The passenger business at Meridian compares favorably with such places as Jackson, Tennessee, Cairo, Illinois, a little greater than West Point, greater than Murphysboro, not as much as Mobile and not as much as St. Louis. I think Meridian comes next in importance after St. Louis and Mobile. Mobile originates more business than Meridian. If you count as Meridian business that which is delivered to us by the Northeastern Railroad at Meridian, it may be perhaps larger than Mobile. In population I think Meridian is about the size of Jackson, Tennessee, and Cairo- Illinois.

RE-DIRECT.

Meridian has better facilities now than has Mobile, and considerably better than Cairo.

SUPPLEMENTAL AFFIDAVIT OF R. V. TAYLOR, ASKED FOR ON THE HEARING BY THE COURT.

R. V. Taylor, being duly sworn, on oath states:

"I give below a statement of the 'out-of-pocket' ('out-of-pocket' meaning the direct cost of operating these trains as distinguished from other general passenger expense, and also as distinguished from expenses common to freight and passenger service) cost of operating trains Nos. 7, 8, 9, and 10, between Meridian, Mississippi, and Waynesboro, Mississippi:

Conductor, $4.50 per day (2)	$ 9.00
Baggagemen, $2.90 per day (2)	5.80
Flagmen, $2.70 per day (2)	5.40
Porter, $40.00 per month (2)	2.66
Engineers, $5.15 per day (2)	10.30
Firemen, $3.00 per day (2)	6.00
Hostler, Waynesboro, $70.00 per month	2.33
Inspector, Meridian, $2.00 per day	2.00
Fuel, 7.24c per mile (208 miles)	15.50

Meridian Terminal expense, 35c per car (12 cars per day, 4 trains of 3 cars each, in and out)		4.20
Engine house expense	.0290	
Water	.0067	
Lubricants	.0023	
Other engine supplies (tools, lanterns, signals, etc.)	.0025	
Train supplies and expenses (cleaning, watering, icing, heating, markers, torpedoes, fusees, etc.	.0216	
	.0621 (208 miles)	12.91
		$75.65

The foregoing statement is as near a correct statement of the "out-of-pocket" cost of operating trains 7, 8, 9 and 10, between Meridian, Mississippi, and Waynesboro, Mississippi, as it is possible for me, under the circumstances, to make. I have not calculated the expenses on the basis of four trains, but have considered that the trains could be operated in "turn-around" service, so that to operate four trains only two crews would be necessary. The Meridian Terminal Expense of 35c per car is included because the Meridian Terminal Company is a separate corporation, and each railroad entering that terminal has to pay in proportion to the number of trains and cars it operates in and out of the terminal. I have included the pay of hostler at Waynesboro, which would be necessary. We have no such employe there at this time. I also have included an inspector at Meridian because I took off an inspector when these trains were taken off, and have to replace him if they are put back. The other expenses, such as engine-house expenses, water, lubricants, supplies, etc., are arrived at by taking the figures therefor in the 1914 annual report of this Company, and are as nearly accurate as is possible to secure them.

I have not included in this what may be termed "out-of-pocket" cost, any maintenance of way and structures expense chargeable to these trains, which cover expenses incident to wear and tear of track and buildings and renewal of same. It further does not include any items covering repairs, renewal and depreciation of passenger locomotives and passenger cars and

items of expense attributable to the Mechanical Department that these trains should bear their proper pro rata share of. There is also not included certain transportation expenses other than direct cost of operation that they should bear a portion of, such as dispatching trains, station employes, all classes of yard expenses, crossing flagmen and watchmen, clearing wrecks, telegraph and telephone operation, stationery and printing, loss and damage to baggage, damage to property caused largely by sparks from locomotives, damage to live stock and personal injuries. Nor does it include any proportion of traffic and general expenses and advertising. All of which it should be charged with its pro rata share of."

W. W. Middleton, being produced and duly sworn, the Court stated that it would accept his affidavit as his direct testimony. His affidavit is as follows

"My name is W. W. Middleton. I am the Auditor of the Mobile & Ohio Railroad Company, and have direct charge of the accounts under the supervision of the Comptroller of said road. I have had fourteen years' experience in the Accounting Department of railroads.

The Mobile & Ohio Railroad Company keeps its accounts in accordance with the requirements and rules prescribed for interstate railroads by the Interstate Commerce Commission.

The Mobile & Ohio Railroad Company for the year ending June 30th, 1914, had a balance of income over charges of $85,-108.80. This was, of course, without deduction of any amount for dividends, or for additions and betterments.

I have had made, and attach hereto as Exhibit "A" to this affidavit, a statement of the results from operation of the Mobile & Ohio Railroad for the months of July, August and September, 1914. This statement is true and correct, of my personal knowledge. It shows that there was a surplus over fixed charges and taxes for the month of July of $11,652.00, and that there was a deficit for the month of August of $25,641.00, and that there was a deficit for September of $113,627.00, making a total deficit for the period of $127,616.00. This statement shows a deduction for fixed charges and taxes. The fixed charges and taxes for the year are known, and a proper pro rata of the fixed charges and taxes is set up each month against the net revenue

of that month. There is not deducted in the statement any amount for betterments or improvements, and no amount to accumulate any sum with which to pay a dividend.

I have had prepared, and attach to this affidavit as Exhibit "B," a statement showing the revenue from passengers and passenger revenue per train mile on Mobile & Ohio trains 7, 8, 9, 10, 11 and 12, for the months of July, August and September, 1914, and the month of September, 1913. This is a correct statement, made up from the details in my office, and I know of my own knowledge that it is true and correct. This statement shows that the passenger revenue per train mile of these trains during July 1914, averaged 65 cents, during August, 1914, 64 cents, during September, 1914, 56 cents, during September, 1913, 61 cents.

I have also had prepared, and attach hereto as Exhibit "C," a statement showing the revenues from passengers carried on trains 7, 8, 9 and 10, for the period October 1st, 1914, to October 5th, 1914, inclusive, between Meridian, Mississippi, and and Waynesboro, Mississippi, showing the number of passengers carried locally between those stations on each of said trains during the period, and the amount of passenger revenue, the number of train miles, and the passenger revenue per train mile. This statement shows the average passenger revenue per train mile of these trains to be 36 cents. This statement is true and correct, made up from the records in my office under my direct supervision.

I have had prepared, and attach hereto as Exhibit "D," a statement showing the revenues from passengers carried on trains 11 and 12 for a period October 1st, 1914, to October 5th, 1914, inclusive, between Meridian and Okolona, Mississippi, showing the number of passengers carried on said trains during the period, and the amount of passenger revenue, number of train miles and passenger revenue per train mile. This statement shows the average revenue per train mile of these trains to be 25 cents. The statement is true and correct, compiled from the records in my office under my direct supervision.

I have had prepared, and attach hereto as Exhibit "E," a statement showing, in comparative form, the number of passengers travelled, and the revenue from passengers carried on 1, 2, 3, 4, 5 and 6 from September 17th, 1914, to September 26th,

1914, inclusive, and from October 6th to October 15th, 1914, inclusive. Trains 1, 2, 3 and 4, which take the place of the trains taken off, show during the period October 6th to October 15th, when trains 7, 8, 9, 10, 11 and 12 were not operated, an increase in passengers handled of from 5,124, the number handled from September 17th to 26th, to 9,397, or an increase of 4,273 passengers. Trains 5 and 6, which were operated during both periods, show a decrease in passengers handled of 862. The schedules of trains 1, 2, 3 and 4 take the place of the schedules of the trains taken off, and, in my opinion, the loss shown by trains 5 and 6 is approximately the normal loss due to the falling off in the passenger business, although certain of the parties who formerly traveled on the trains taken off may have traveled on trains 5 and 6, thus increasing the revenue of those trains, and the figures may not, therefore, reflect the full normal loss due to lack of business.

The Mobile & Ohio Railroad Company does not keep its accounts so as to admit of an exact separation of operating revenues, expenses and taxes incident to passenger service. The separation of operating results as between freight and passenger service is not required by the Interstate Commerce Commission.

Realizing that certain operating costs could be allocated to passenger and freight service, this Company commenced, as of July 1st, 1914, to make a separation of such items as could be properly assigned to freight and passenger service respectively, which includes those expenses directly assignable to passenger service, as provided in Classification of Operating Expenses promulgated by the Interstate Commerce Commission, effective July 1st, 1914. I have, therefore, had prepared, and file as Exhibit "F" hereto, a statement showing the revenues, expenses and taxes in connection with passenger service, for the two months ended August 31st, 1914. This statement shows the total revenue derived from passenger service, which includes a proportion of revenues common to both freight and passenger service (being determined on basis of the ratio of passenger revenue to total freight and passenger revenue).

The next item in the statement shows the amount of expenses directly assignable to passenger service, to which has been added a proportion of expenses and taxes common to both

freight and passenger service, on the following bases: a proportion of certain so-called 'common' expenses has been assigned to passenger service on the basis of the ratio of passenger train miles to total revenue train miles; a proportion of other so-called 'common' expenses has been assigned to passenger service on the basis of ratio of passenger revenue to total freight and passenger revenue. These methods of apportioning 'common' expenses between freight and passenger service are considered conservative and are used by other well regulated carriers.

The statement shows the total revenues—passenger service to be $331,102.85, and the total expenses and taxes—passenger service to be $339,247.60. Dividing these amounts by the total number of passenger train miles, I produced figures showing the revenue per passenger train miles to be $0.9708, and expenses and taxes per passenger train mile to be $0.9944, or a net loss per passenger train mile of $0.0236.

There are not many railroads in the United States which attempt to separate their passenger cost from their freight cost. This attempt is made, to my knowledge, by the L. & N. R. R., the Pennsylvania R. R., and the Norfolk & Western R. R. An examination of the annual reports of those companies for the year 1913 shows the cost per passenger train mile to be as follows:

Pennsylvania R. R.	$1.548	taxes excluded.
L. & N. R. R.	1.075	taxes excluded.
Norfolk & Western R. R.	.9658	taxes excluded.

The separation made by these companies is along similar lines to that used in arriving at the figure of $0.9944 (which includes proportion of taxes) above given for the Mobile & Ohio Railroad Company as its cost per passenger train mile. The method used by me is not, of course, original with me, but it is that method which is recognized as one of the several proper methods of reaching as close an approximation of a division of these costs as is possible.

I attach hereto another statement which is marked Exhibit "G." This statement has been made up under my direction and personal supervision, and I know it to be true and correct. The idea I had in mind in making this statement was to show what proportion of the total cost per train mile is made up of ex-

penses chargeable in whole to passenger trains, leaving aside the common expenses, which, as explained, have to be divided on a recognized basis of division. This statement shows that the cost per train mile of the expenses chargeable in whole to passenger trains is $0.493. The proportion of common expenses and taxes assignable to passenger traffic on a recognized basis of division amounts per train mile to $0.501, making the total cost per train mile $0.994, which corresponds with the total cost given on Exhibit "F."

EXHIBIT C.

Statement Showing Number of Passengers and Revenue From Passengers Carried Locally Between Meridian, Miss., and Waynesboro, Miss., inclusive, on Trains Nos. 7, 8, 9 and 10, for Period October 1 to 5, 1914, inclusive.

Train No.	Number of Passengers.	Passenger Revenue.	Train Miles.	Passenger Revenue Per Train Mile.
7	267	$ 99.95	260	$0.38
8	231	96.76	260	0.37
9	218	68.33	260	0.26
10	320	110.59	260	0.43
Total	1036	$375.63	1040	$0.36
Average Per day	207	75.13	208	0.36

EXHIBIT D.

Statement Showing Number of Passengers and Passenger Revenue on Trains Nos. 11 and 12, for Period October 1 to 5, 1914, inclusive.

Train No.	FROM	TO	Number of Passengers	Passenger Revenue	Train Miles	Passenger Revenue Per Train Mile
11	Okolona	Meridian	371	$162.53	635	$0.26
12	Meridian	Okolona	310	151.81	635	0.24
Total			681	$314.34	1270	$0.25
Average per day			136	62.87	254	0.25

EXHIBIT G.

Statement Showing Assignment of Operating Expenses and Taxes to Passenger Service, Period of Two Months Ended August 31, 1914.

Total operating expenses and taxes	$1,721,526.99
Expenses chargeable in whole to Passenger Service	168,301.24
	$1,553,225.75
Of the amount $1,553,225.75, there is assignable directly to Freight Service	904,821.64
Leaving as common to both Freight and Passenger Service	648,404.11
Of this amount there has been assigned to Passenger Service on recognized basis of division	170,946.36
Or	26.36%
Expenses chargeable in whole to Passenger Service	168,301.24
Cost per train mile on this basis	.493
Proportion of expenses and taxes assigned to senger Sercise on recognized basis of division	170,946.36
Cost per train mile of the common expenses on this basis	.501
Total cost per train mile	.994

NOTE: Exhibits "A," "B," "E" and "F" not inserted because of length, and because their substance is explained in affidavit.

CROSS-EXAMINATION OF W. W. MIDDLETON, IN THE PRESENCE OF THE COURT.

The earnings of the trains that run between Meridian, Mississippi, and Mobile, Alabama, are stated in my affidavit on the basis of the earnings of each train, and they are not separated as to state the earnings of those trains within the State of Mississippi. The earnings given for the trains that ran between Meridian, Mississippi, and Union City, Tennessee, are on the train basis, and are not so separated as for me to tell you what part of those earnings was within the State of Mississippi,

except for the period given in my affidavit. The distance between Mobile, Alabama, and Meridian, Mississippi, is 133 miles, 61 of which are in Alabama. Trains 5 and 6, which operate between Meridian and Okolona, Mississippi, from September 17th to 26th carried 3,574 passengers. This train was left on, and from October 6th to October 15th the same train for a like period of ten days carried 2,712 passengers, a decrease of 862. September is a lighter month than December or June. I do not know that it is lighter than October or November. I have not attempted to determine the expenses of those particular trains running between Meridian and Mobile. In making up the statement showing the expenses and taxes per passenger train mile on the M. & O., shown to be .9944c per passenger train mile, I have included no fixed charges whatever. You wish to know what expenses constitute the expenses of those particular trains. As I have stated, no attempt has been made to determine the operating expenses directly incident to the operation of these particular trains. That is a task which I do not think anyone could perform. The Interstate Commerce Commission does not require it. There are a number of recognized bases of determining the cost of operating the passenger train service on a line as a whole. In my affidavit I have used two of those bases. I have dealt, however, with the expenses of operating passenger service on the M. & O. as a whole for a period of two months ending August 31st, 1914. I have assigned in that statement certain of the operating expenses which are directly chargeable to passenger service. The Interstate Commerce Commission issued a Specification of Expenses effective July 1st, 1914, wherein it instructed that such items of expense should be charged directly to passenger expenses as could be directly assigned to passenger service. I have in a package of papers here, subject to examination, those direct expenses with which I have charged the operation of passenger trains, or the operation of passenger service as a whole. There are also certain common expenses, that is common to both freight and passenger service. In dividing these common expenses as between freight and passenger I have used certain recognized bases. I have added those expenses directly assignable to passenger service to that proportion of the common expenses assignable to passenger service, and produce a total

expense against passenger service of $339,000.00. The passenger revenue is accurate and amounts to $331,000.00 or a loss per passenger train mile on the whole line of $0.0236.

The amount of unpaid vouchers which we have on hand does not include any vouchers covering settlements with parties injured in the wreck at Buckatunna. The damages for that wreck had been settled long before this period. Of course, the amount paid out had to come out of the cash. A part of the cash earned in years prior to this had been used because of extraordinary expenses incurred during those years on account of high water on the Ohio River.

AFFIDAVIT OF G. A. COOKE.

I am the Assistant Secretary and Assistant Treasurer of the Mobile & Ohio Railroad Company, located at Mobile, Alabama, and have direct charge of the receipts, disbursements and actual cash of the Mobile & Ohio Railroad Company. I have been in the service of the Mobile & Ohio Railroad Company twenty-eight years in November, 1914. There is made out daily in my office, under my direction and supervision, what is known as a Daily Cash Statement. On September 30th that statement showed actual working balance of the Mobile & Ohio Railroad Company to be $74,885.79. It also showed that I had approved vouchers on hand amounting to $1,027,319.00. These approved vouchers date back as far as November, 1913. These vouchers represent payment of various bills and accounts of the company, which bills have been approved by the proper officers, vouchers drawn, audited, and passed to me with nothing remaining to be done thereto except to pay same. These vouchers do not represent any fixed charges or any interest. The Cash Statement for October 10th showed that the Mobile & Ohio Railroad Company had an actual working balance of $185,404.00, and had approved vouchers on hand of $980,434.00. A like statement for October 20th, 1914, showed that the Mobile & Ohio Railroad Company had an actual working balance of $56,488.00, and approved vouchers on hand amounting to $919,730.00. The reduction in actual working balance is due to certain pay roll payments and to the payment of certain vouchers. A normal amount of approved vouchers to have on hand

would be between four and five hundred thousand dollars. The normal amount of cash on hand varies greatly from day to day, according to remittances and the holding of cash by me to meet pay rolls and such like expenses which have to be made, so that the cash working balance is not a good index, but the amount of unpaid vouchers, some of which are in payment of bills a year old, is, because it shows that for an extended period the Company has not had on hand over its current operating expenses and fixed charges sufficient funds to pay said vouchers. I can certify that the figures given are true and correct. They are made up under my direct personal supervision.

AFFIDAVIT OF C. A. PIGFORD.

I am at present Superintendent of the Mobile & Ohio Railroad Company, and reside at Meridian, Mississippi. I have been in the employ of the Mobile & Ohio Railroad Company for thirty-seven years. My duties require me to be constantly on the line of the Mobile & Ohio Railroad Company, and I am familiar, from almost daily inspection, with the number of people who travel on Mobile & Ohio local trains 7, 8, 9, 10, 11 and 12. I am also familiar with the number of passengers that travel on the through trains numbered 1, 2, 3 and 4. My personal observation has been that ordinarily a very small number of passengers travel on trains 7, 8, 9, 10, 11 and 12. Since the said trains were taken off the trains numbered 1, 2, 3 and 4, which were formerly fast trains and are now local trains, carry a greater number of passengers, and are still only fairly well filled.

The trains now operated furnish more than adequate accommodation for the number of passengers traveling.

There are five fair-sized towns and five small villages or settlements between Meridian and Waynesboro, including Waynesboro. The total population of these places and all of these towns, according to the 1910 census of the United States, is 5,456 people. I have not received a complaint from any of these towns, other than Meridian, against the withdrawal of the trains. I personally visited and assisted in securing sixty-one affidavits from these several towns, the substance of which was that, considering the low price of cotton, which made very little cash

money, they did not think the people would travel as much in the future until the depression was over, and they did not think the taking off of the trains would materially injure the business of the town, and they thought that the Railroad Company ought to be allowed to take them off if they were not paying. These affidavits were from practically every business man in all of the towns. The territory from Meridian, Mississippi, south to and including Waynesboro, is not a good agricultural country, and the only agricultural product that is raised to any extent is cotton. That territory was formerly a yellow pine timber section, but a very large part of the timber has been cut off, and the cut-over pine lands have not yet been developed.

AFFIDAVIT OF G. H. FORDHAM.

Personally appeared before me, the undersigned authority, a Notary Public, who, being by me first duly sworn, on oath states:

My name is G. H. Fordham. I am engaged in the lumber business at Quitman, Mississippi, a station on the line of the Mobile & Ohio Railroad Company between Meridian, Mississippi, and Waynesboro, Mississippi. I have lived five years at Quitman and am generally familiar with the passenger trains that have been operated on the Mobile & Ohio Railroad in the past and those that are now operated. Up to the year 1909, or prior thereto, the Mobile & Ohio Railroad Company operated only two passenger trains each way per day, the same number it now runs. The others, which were taken off, numbered 7, 8, 9 and 10, and were a convenience, but considering the fact there is no price for cotton, or a very low price, which makes very little cash money, I do not think that the people are traveling, or will travel, as much in the future, until the depression is over. The taking off of these trains will not injure materially the business of this town. I do not know what to consider adequate accommodations for passengers. There are two trains each way and people can always find room on them, and can get from here to any place they want to twice each day. If the trains do not pay, and the Railroad Company is losing money not only on

these trains, but on all of its freight and passenger trains, I think they ought to be allowed to take the trains off, and I have not heard anyone living in this town complain about it.

G. H. FORDHAM.

Sworn to and subscribed before me this the 21st day of October, 1914.

J. W. GLYNN,
Notary Public.

The complainant offered affidavits which were in the same language as the preceding affidavit from the following parties:

J. W. Wilson, in the lumber business at Quitman; had resided there one year.

F. R. Crandall, in the lumber business at Quitman; had residid there five years;

T. A. Bolster, in the general merchandise business at Quitman; had resided there seven years;

J. K. Kirkland, in the general mercantile business at Quitman; had resided there thirty years;

J. A. Terral, in the banking business at Quitman; had resided there ten years;

Jno. S. Dabbs, in the livery business at Quitman; had resided there forty-eight years;

Jeff M. Carter, in the mercantile business at Quitman; had resided there fifteen years;

J. M. Carter, in the general mercantile business at Quitman; had recided there fifteen years;

Ben H. Carter, in the mercantile business at Quitman; had resided there ten years;

M. E. Lott, in the drug business at Quitman; had resided there twenty years;

J. P. Adams, in the mercantile business and Mayor of Quitman; had resided there fifteen years;

B. H. Donald, in the drug business at Quitman; had resided there thirty years;

F. H. Deas, in the real estate business at Enterprise; had resided there thirty years;

M. W. Buckley, in the mercantile business at Entereprise; had resided there forty years;

C. C. Hand, in the mercantile business at Enterprise; had resided there fifty years;

C. T. Bonner, in the mercantile business at Enterprise; had resided there twenty years;

W. E. Bass, in the mercantile business at Enterprise; had resided there twenty years;

W. Roberson Smith, in the drug business at Enterprise; had resided there seven years;

J. M. Buckley, in the mercantile business at Enterprise; had resided there twenty-four years;

W. G. Edwards, postmaster at Enterprise; had resided there twenty-one years;

G. R. Olliphant, Jr., in the lumber business at Enterprise; had resided there thirty-six years;

S. H. Andrews, in the mercantile business at Enterprise; had resided there forty years;

R. J. Barbour, Jr., in the mercantile business at Enterprise; had resided there five years;

J. E. Stovall, in the newspaper business at Shubuta; had resided there thirty-seven years;

J. W. Whitehead, in the jewelry business at Shubuta; had resided there eighteen years;

John N. Patton, in the general mercantile business at Shubuta; had resided there twenty years;

R. M. Hand, physician and surgeon at Shubuta; had rtsided there thirty-nine years;

H. E. Flournoy, in the mercantile business at Shubuta; had resided there forty years;

R. P. Jones, in the contracting business at Shubuta; had resided there fifteen years;

T. F. Hudzen, in the drug business at Shubuta; had resided there twenty-four years;

William M. Smith, in the mercantile business at Shubuta; had resided there twenty-five years;

T. R. Gates, in the mercantile business at Shubuta; had resided there forty years;

F. P. Ellis, in the general mercantile business at Shubuta; had resided there eight years;

W. H. Patton, in the general mercantile business at Shubuta; had resided there fifty-five years;

J. N. Brownlee, in the lumber manufacturing business at Shubuta; had resided there ten years;

J. E. Rainwater, in the general mercantile business at Shubuta; had resided there twenty-five years;

J. M. Nettles, in the general mercantile business at Shubuta; had resided there twenty years;

T. L. Wainwright, in the cotton manufacturing business at Stonewall; had resided there forty-two years;

J. S. Gray, in the lumber manufacturing business at West King; had resided there five years;

J. A. Leggett, Cashier of The Peoples Bank of Waynesboro; had resided at Waynesboro three years;

O. O. Lomax, M. D., physician and surgeon at Waynesboro; had resided there sixteen years;

T. O. Slaughter, in the drug business at Waynesboro; had resided there fourteen years;

J. W. Alexander, editor and publisher, Waynesboro; had resided there twenty-three years;

J. C. Rush, M. D., physician at Waynesboro; had resided there sixteen years;

H. B. Cole, in the manufacturing business at Waynesboro; had resided there thirty-three years;

W. M. McAlister, attorney-at-law (County Attorney) at Waynesboro; had resided there twenty years;

C. I. Hendrix, in the mercantile business at Waynesboro; had resided there twenty years;

J. B. Saxon, attorney at law, Waynesboro; had resided there four years;

J. T. Hairston, in the livery business at Waynesboro; had resided there six years;

C. L. Daniel, in the merchandise business at Waynesboro; had resided there twelve years;

J. A. Smith, in the mercantile business at Waynesboro; had resided there seventeen years;

Gandy Bros., in the mercantile business at Waynesboro; had resided there nine years;

J. M. Smith, in the real estate business at Waynesboro; had resided there seven years;

W. P. Gray, physician at Waynesboro; had resided there thirty-five years;

W. B. McMorries, in the banking business at Waynesboro; had resided there six years;

J. F. Pou, Sr., physician, surgeon and farmer, at Waynesboro; had resided there twenty-eight years;

J. T. Pinkerton, in the live stock business at Waynesboro; had resided there eight years;

W. E. Latham, in the mercantile business at Waynesboro; had resided there sixteen years;

R. O. Peel, in the general mercantile business at Waynesboro; had resided there twenty-two years;

T. J. Browning, druggist at Waynesboro; had resided there twelve years;

Truman Gray, farmer and Postmaster at Waynesboro; had resided there sixty years;

J. R. Huggins, manufacturer and general merchandise business at Waynesboro; had resided there fifty-three years;

W. H. Fields, in the lumber business at Hiwannee; had resided there two years;

Geo. D. Weems, in the general merchandise business at Shubuta; had resided there thirty years;

Oscar P. Phillips, in the general merchandise business at Shubuta; had resided there thirty years.

AFFIDAVIT OF C. I. WEEMS.

"Personally appeared before the undersigned authority, ..., who being first duly sworn, on oath states:

My name is C. I. Weems. I am engaged in mercantile business at Shubuta, Mississippi, a station on the line of the Mobile & Ohio Railroad between Meridian, Mississippi, and Waynesboro, Mississippi. I have lived 34 years at Shubuta, and am generally familiar with the passenger trains that have been operated on the Mobile & Ohio Railroad in the past and those that are now operated. Up to 1909, or prior, the Mobile & Ohio Railroad Company only operated two passenger trains each way per day, the same number that they now run. The others which were taken off, numbered 7, 8, 9 and 10, were a convenience, but considering the fact that there is no price for cotton, or a very low price, which makes very little cash money, I do not think the people are traveling, or will travel, as much

in the future, until the depression is over. The taking off of the trains will not injure materially the business of this town. I do not know what to consider adequate accommodations for passengers. There are two trains each way and people can always find room on them, and can get from here to any place they want to twice any day. *If* the trains do not pay and the Railroad Company is *losing money* not only on these trains *but on all of its freight and passenger trains,* I think they ought to be allowed to take the trains off, and I have not heard anyone living in this town complain about it. But criticism is severe, especially anxious for Nos. 7 and 8 to be put back on.

C. I. WEEMS,
V. P. & Mgr., W. L. Weems Co., Inc.

Sworn to and subscribed before me this the 21st day of October, 1914.

T. A. LEDYARD,
Notary Public, for Shubuta, Miss."

CONDENSATION OF EVIDENCE OFFERED BY DEFENDANT ON THE HEARING OF APPLICATION FOR INJUNCTION.

Defendant introduced as evidence on this hearing the depositions of the following witnesses.

The said depositions were in substance as follows:

R. B. MIMS.

I am a passenger conductor on the M. & O. R. R. Co. and have worked for the M. & O. since 1890. I run on the district from Meridian to Mobile and run on trains Nos. 9 and 10, 11 and 12. These trains leave Meridian as follows: No. 12 leaves at 4 o'clock; No. 11 arrives here at 10:50; No. 10 arrives from Mobile at 11 o'clock; No. 9 leaves Meridian at 4 o'clock. There are three passenger cars on these trains and are pulled by a small engine. The conductors' pay for operating these trains is .029 per mile. I do not know what the engineers' pay is, but the baggage man gets .0165 and the flagman gets .0160 per mile and the porter gets $45.00 per month. I suppose the train consumes about six tons of coal from Meridian to Mobile and vice versa; they take water twice between Meridian and Mobile;

on each trip about four pints of valve oil are used and about one gallon of engine oil and about thirty pounds of ice.

The revenue on these trains is derived from travel or passenger traffic and baggage and occasionally they carry mail.

In answer to the question as to the amount of traffic now as compared to the traffic done by this road when these trains were installed, I will say that at the present time we were not doing anything at all; we are scarcely hauling any passengers at all, on those runs now. If the trains were taken off, the passenger leaving Meridian on the proposed schedule would leave about 3:10 a. m. and about 1:45 in the afternoon; would get to Quitman about 2:45 in the afternoon, and if a passenger didn't want to spend the day in Quitman, he would have to be up until 12:30. The Mobile & Ohio has what is known as the "White System," which is a system for checking transportation. The men employed in this service are employed by the White System, board your train with revenue ticket the same as anyone else and check your passengers and call for your transportation. I don't know the cost of this service to the road. I hardly ever see the same men twice. I am usually checked up once on each trip. The last Legislature passed a law requiring conductors to pull mileage on trains; prior to that time they were not allowed to honor mileage coupons, but same had to be exchanged for a ticket at the agent's office. On the day of examination, I handled 132 passengers from Waynesboro to Meridian. We didn't bring them all here. That was the total handled on the train from the time it left Mobile; the travel was extremely light from Mobile to Waynesboro. When I went into the service of the road in 1890, I think there was one train each way per day, and at that time there were only nine freight crews in the service of the road. Passengers were allowed at that time to ride on local freight trains.

CROSS-EXAMINATION.

I do not pretend to know, or to have stated, all of the elements of cost that enter into the running of a train between here and Mobile. I am not familiar with the other items of cost. I am a member of an organized labor organization and they have a contract with the railroad. I am not in a position to speak as to whether the railroad should be allowed to reduce expenses by cutting the wages of such laborers. I am not an official in

the labor organization. I wouldn't want mine cut. I don't know how the others would stand. I think it costs approximately the same to run a train with a few people on it that it would with a large number on it.

R. W. McKINLEY.

I am a passenger conductor on the M. & O. at the present time and run on trains 9, 10, 11 and 12. The sources of revenue of these trains principally are passengers; they carry some mail, no express. The average number of passengers now carried is considerably off from what it has been. I do not know the number that we brought in here today. This is Saturday. We handled between Okolona and Meridian today, a distance of 127 miles, 90 pay passengers. I do not mean that we brought 90 into Meridian, but that that was the total number we handled off and on all day. When the trains in question were first put on, there were less passengers than there are at the present. At the present time, this train is running as a special, is not represented on the schedule cards of the Company. I think the public is pretty well informed that these trains will be run until they are notified that they would not be run. I could not say a passenger coming from other lines would figure on taking passage on these trains. I can't say whether the M. & O. would have adequate passenger service if it should take off trains involved in the litigation.

J. H. WRIGHT, President of the Guaranty Loan, Trust & Banking Company.

I have lived in Meridian thirty years. Meridian has become a business center, jobbing, shipping and manufacturing point; has a population of some twenty-six or twenty-eight thousand and is the center of the surrounding territory for a distance of 100 miles or more. Meridian is an excellent business point and since I have lived here, since 1880, it has grown from about 8,400 to its present size. There is a large number of wholesale houses at Meridian. The following roads come to Meridian: M. & O.; A. G. S.; Southern Railway; N. O. & N. E.; A. & V., and Meridian & Memphis. Travel in and out of Meridian is large. I

don't think there would be adequate facilities for the public travel if those six trains were taken off in one day. I think the service that it now proposes to give is practically the service they were giving Meridian when I came here. I think at that time, in addition the people could ride on local freight trains and if the road is allowed to discontinue the trains ordered to be continued it would possibly give Meridian poorer service on the M. & O. than it had when it was a city of 10,000 inhabitants. I think it would curtail business in Meridian very much. I hardly see how business could be carried on successfully, that is, along the line of the M. & O. I think the taking off of the trains would seriously injure business, and if it was followed by other roads leading into Meridian, it seems to me it would be turning back the hands of time twenty or thirty years. It would paralyze the growth and development of Meridian. Under present conditions, most of the business at Meridian is run at a very small profit or without profit; owing to conditions other than the taking off of these trains business is very much depressed from other causes; other business is affected as much by the times as the railroad business and if the railroad cuts down their service and force, it will largely reduce the pay roll and the consequences would be serious to Meridian. I think the business men of Meridian have tried to maintain their usual force under the present conditions. I think transportation is one of the most important factors influencing the growth and permanent advantages in the making or unmaking of communities. In my judgment, railroad companies, if unrestrained, have almost the power to make and unmake communities.

CROSS-EXAMINATION.

There was considerable growth in the city of Meridian from 1884 to 1890 and a splendid growth from 1890 to 1900. The growth was gradual through all the period of time up to now. Business was fairly good in 1900 in Meridian and 1908 business hadn't fully recovered from the panic of 1907. I do not remember when the passenger trains were put on; do not travel very much on the railroads and on any of these trains.

Q. If these passenger trains were put on, the first of them, in 1909, what do you say as to whether, or not, Meridian got its growth from 1909 up to date, or from 1884 up to 1909? (A.) I

would say the growth has been practically steady, year by year, since 1884.

I do not know how many people on an average come in on any of these trains. There is a general business depression over the country which banks have materially felt—rates of money have advanced. I understand that passenger fares and freight rates cannot be increased in Mississippi without the consent of the Railroad Commission. I have not heard of any recent raise in passenger fares in the State of Mississippi. I think when I first came here, passenger fares were 3 or 3 1-2 cents. Mileage can now be purchased at 2c per mile. Prices of goods generally have gone up, including flour, sugar and meat, but corn has gone down. I have no knowledge of the finances of the M. & O. R. R. Co. I think if the Railroad Company is losing money, they ought to be allowed to reduce their expenses in some manner to try to reduce the deficit and I think this is the time for great sympathy between the public and the railroads. I think railroads should be allowed to curtail the number of trains, but I do not think it is perhaps necessary to take off six of the trains in one day. In answer to question as to whether it would be a disadvantage to Meridian for the M. & O. to pass into the hands of a receiver, I answer that I am not sure of that; haven't seen a statement, and don't know the purpose for which the stocks and bonds are issued, but I do know it is the case of most transportation companies that they carry mortgages and stock to excessive amounts for which they are trying to earn interest on the bonds and dividends on the stock, but I don't apply that to the M. & O. R. R., because I don't know whether they are over-capitalized or not. In answer to question if it be a fact that the M. & O. at the close of business on the 30th day of September, 1914, had cash on hand amounting to $75,000.00, and in its treasury had approved and audited vouchers which had gone to the treasury for payment amounting to over $1,000,000.00, covering bills running back as far as September, 1913, would I say as a business man that there was need for radical retrenchment, I answer, yes, on the face of that statement it looks so. To answer that intelligently, I should want to know if some portion of that wasn't for payment on interest of over-capitalization. In answer to the question if the $1,000,000.00 of vouchers referred to has nothing to

do with fixed charges of interest or dividends, but was simply payment of current bills and if the company was not over-capitalized and had never in its history declared over 5 per cent dividend and up to ten years ago had never declared any dividend, I should say that I think there was great need for retrenchment. The M. & O. has not been hostile to Meridian. I think we have always been the best of friends. I think it is time for general consolation and sympathy all around. If it be a fact that no one of the six trains to be taken off pays the cost of operation, I doubt if I feel that the road should take off all six. If it be shown that no one of them pays the cost of operation during a period like this, because I feel that all kinds of business costs more than it ought to cost, I say that I don't think they ought all to be taken off, because I think it is too much of a blow on the community that the road serves. I would rather see the rates raised. I would rather the railroad make application for a raise of rates and I believe that the business men had rather pay more freight than see these trains taken off. I think the purpose of taking the trains off is to save money. I do not know whether the companies could secure a raise of rates by applying to the Commission or not.

RE-DIRECT EXAMINATION.

Since 1890, a large part of the wagon trade of Meridian has been cut off by reason of building new roads and its growth is due more to railroad traffic than to rural traffic. In 1890, the streets here were full of prairie schooners, that is, covered wagons. We used to get wagon trade to within ten miles of the Illinois Central, and a large part of this trade now comes by rail. Cotton is shipped to Meridian now by rail. A large number of people that trade in Meridian come by rail from the small towns. Commodities sold in this section are lower than formerly, that is, cotton is lower, corn lower; some of the commodities used, like wheat, sugar, are higher, but the products raised in this country are lower.

RE-CROSS.

Last year, a customer ordinarily was advanced on a bale of cotton about $35.00 or $40.00; at the present time, a customer is advanced about $25.00 to $35.00.

J. V. ULMER.

I live in Meridian; am traveling salesman representing Morris & Co., East St. Louis, Ill.; came to Meridian about twelve years ago. I travel exclusively over the M. & O. My observation on the trains, I think the travel is holding up pretty good. I have been told by different people who work for the railroad company that travel averaged about as good as in the past. As far as I could observe, there has been no diminution in the passenger traffic on this line of road. There is fair travel on this road. We have to pay for commodities shipped by my house and the freight on everything we ship is higher than it was when I first came into the territory. There is a large number of wholesale houses in Meridian that employ a good many traveling men. If these six trains are taken off, it would be almost disastrous to the traveling men, as they could not make the towns and get in and out as at present. Heretofore traveling men have had good accommodations and could work the towns, making several in a day's time. If the trains are taken off, it will be impossible to do the amount of business and it would involve hiring a private conveyance at large expense and a good deal of loss of time, especially to the south of Meridian, and if the trains are taken off, traveling men will have to stay in a town all day and far into the night and miss doing business. If the wholesale houses in Meridian should do the same volume of business as they now do they would either have to largely increase their men or largely increase their expense accounts and the increased expense would be excessive to them and they wouldn't make as many towns. The travel on the proposed schedule would be a hardship on the traveling man and would break his rest, forcing him to travel at night. The schedule would be worse than at any time on the M. & O. since I have been in this territory, because it used to be that they would let us ride on the local freight trains. There may have been slight decrease in passenger business, but it is hard to see the discrepancy. If a party wished to travel from Meridian or go south to some point on the A. & V., and if the A. & V. adopts the same policy of retrenchment, it would result in a great deal of loss of time and inconvenience. Taking the situation here at Meridian as it now exists, if these six trains are taken off, the public would not have reasonable

conveniences of travel, and it would have a serious effect upon Meridian and adjacent territory, and this depression would react in turn upon the railroad; under present methods of travel, the railroads get a good deal that is due entirely to the traveling men jumping from one town to another, paying his passenger fare and excess baggage charges which would be reduced by taking off the trains. I think also that a convenient schedule causes numbers of people to travel for pleasure as well as business.

CROSS-EXAMINATION.

I think we get a little less for the products that we handle than we did three or four months ago, but they are not cheaper than they were shortly after the war was declared. Prices shot up then, but they have reacted somewhat. Business is somewhat depressed now. I haven't had what you would call a bad business since I have been in this territory. I traveled on the M. & O. in 1906, 1907, and 1908, but do not remember when the trains now involved were put on.

Q. If they were put on in 1909, and you traveled this territory prior to 1909 and your business has always been what you couldn't say bad, you were able to make the territory, weren't you, with the accommodation you had then? A. We had local freight trains, which you won't have if you take these passengers off, which were some help.

Q. Do you know when they stopped letting you ride on the local freight trains? A. I don't know exactly, but I remember the time. I think it was the time you had an accident down here in Meridian, or shortly after that.

Even while they had local freight passenger service, accommodations were bad prior to putting on the present trains. I don't know how many wholesale houses there are in Meridian that have men on the road, approximately six or seven of them here, including branches of packing houses, there are seven or eight. I do not know how many men each of them travels on the M. & O. I know one firm that works three men on the M. & O. and one that works four. I do not know how many work out of Meridian on the M. & O., and cannot give you my best judgment. I do not know whether there would be twenty or ten; there are several of them, but I do not know how many. I can name thirty-five that travel out of Meridian. All

of these travel on the M. & O., but some of them travel on other roads also. There may be some that don't represent Meridian wholesale houses. I can't tell how many of these travel out of Meridian each day. I leave sometimes twice a day, going out and coming back and going out again. I am in Meridian every night except one, and I wasn't able to do that before the present trains were installed. I never have counted the traveling men on the trains, but I never go out but what I see traveling men, several of them, on the train. I should say there would be more than five on an average on the trains that I ride on. In answer to the question, if there were as many as five on each of those six trains if thirty out of the thirty-five would not leave Meridian each day, I answer that I did not mean to say that we all get on the train at Meridian; we ride those trains after leaving Meridian. I could not say how many travel on the other roads, and I could not say whether there are more or less that travel on the M. & O. than on the others. The length of the trips of traveling men vary. It is 74 miles from Meridian to State Line. It would cost me two cents a mile to travel. I have never been to Okatibee and Basic City is not on my map. I think Shubuta is the largest town between here and State Line. It doesn't take a traveling man very long to work one town as a general rule. It would take an hour or an hour and a half for me to work Shubuta. I ride as many as three or four trains a day.

J. D. WADDELL.

I have lived in Meridian about thirty-five years; in the hardware business. I was agent of the East Tennessee, Virginia & Georgia Railroad when I quit the railroad business seventeen years ago. I think there are ten or fifteen, maybe twenty, wholesale houses in Meridian. Meridian is quite a market and traffic is shipped out of Meridian up and down all the railroads. There is a large number of retail business houses in Meridian and a great many people who come to Meridian buy at retail as well as wholesale. Up to six or seven years ago, we had a large wagon trade. Building the N. O. M. & C. R. railroad west of here and the A. T. & N. railroad east of here has cut off the wagon trade and at present we go to the towns along

these lines, solicit their business and ship them by rail. People that come to Meridian from these points usually come by rail now. Goods purchased here are shipped over these railroads to the towns along said roads. When I came here, I suppose there were about 4,500 inhabitants. There has been a continuous growth from then to the present time, when the population is from 30,000 to 35,000. A large number of people travel in and out of Meridian. Under present conditions, most of them travel over railroads rather than by private conveyance. There is a large number of traveling men in Meridian. In answer to the question as to whether or not if the M. & O. took off six passenger trains that would leave reasonable and adequate accommodations to the traveling public, I answer I don't travel much myself, and couldn't tell you much about it. I think it would be quite a hardship. Of course, the trains under the present schedule are quite a convenience, so the traveling men say. We have two traveling men, and another one goes out occasionally, and they always claim it is quite convenient.

In answer to the question, if those trains are taken off, leaving on three trains north and two south each way per day, then whether the conditions that now exist here justify the action, I answer I could not know what the cause was for taking the trains off. If I knew that I could speak. I do not know anything about the volume of traffic.

In answer to the question if I think as a business man taking the trains off will seriously affect the business of Meridian, I answer, yes, I suppose so; it would prevent traveling men from making more towns in a day, and would prevent a good deal of travel that now comes to Meridian. I have observed that the wagon trade in Meridian has largely diminished in the last six or seven years, but the trade of Meridian has steadily increased during this time, notwithstanding the wagons do not come as heretofore. Up to a certain extent facilities have a good deal to do with the amount of travel. Frequently people take trips when the facilities are such that they can conveniently make them that they would not if it wasn't convenient, and if the travel is reduced, of course the revenue would be reduced.

CROSS-EXAMINATION.

I think the trains were put on two or three years ago. Meridian had grown considerably up to that time. There is a gen-

eral depression over the country, the Southern particularly, due, in a large measure, to the war and low price of cotton—some of it, I think, is imagination. I don't know what it costs to run the trains and I don't know what they earn. I think that if the M. & O. earned $1,103,000 and its operating expenses to earn that amount was $837,000 for July, 1914, leaving net revenue of $265,000 before deducting its fixed charges and taxes, which was for that month $253,000, leaving only $11,000 surplus, and if the amount deducted for fixed charges was only the interest on a reasonable bonded debt, I would not consider $11,000, a reasonable surplus out of which to declare dividends and spend money on improvements and betterments. If it be a fact that in the month of August, the operating income of the M. & O. was $1,038,000, and it cost them to earn it $817,000, leaving a net revenue of $221,000, before deducting fixed charges and taxes, which fixed charges and taxes amount to $246,000, leaving a deficit of $25,641, I would say that there is need of immediate reduction in expenses, and if for the two months you had a deficit under fixed charges and taxes of $13,988.00, I would say that there was need for retrenchment. If it be a fact that the treasury had $74,885.00 funds and had approved vouchers on hand awaiting payment of $1,027,319.09, I would say that the road was in bad financial condition. If the M. & O. on the 29th day of September, 1914, had lost in its gross revenue as compared with the same number of days last year $104,000, I would say that its condition was worse than it was last year. I do not think that a railroad company would cut down passenger train service if they thought by doing so they would lose money instead of saving it. I do not know about labor organization of railroads. In answer to question as to whether I think that if it is necessary to curtail expenses of more than $100,000, per month it is fair to make any saving out of the salaries of the employes, I desire to say that I think that is a question of judgment. I think some salaries ought to be cut. I think the fact that the President of this Company has cut his salary 20 per cent, and the Vice-President has cut his 20 per cent, and has cut the other officers on a sliding scale up to 10 per cent, that that is a step in the right direction. I think railroad facilities on passenger and freight have increased greatly in Meridian in recent years. If railroad officials are honest, they would be better judges of

whether to cut expenses or not than the people who are not in such position. In my opinion, trains that do not pay expenses ought to be taken off. I think if there was a great demand for trains, the revenue from them would be sufficient to pay the operating expenses.

RE-DIRECT.

If I were going into business, I would investigate the expense account first before cutting them and would see whether the expenses were proper or not and if the expenses were out of proportion to the revenue, I would investigate all the items entering into it. If there were any superfluous employes or officials or any other expense account that wasn't necessary I would cut that out. If it be a fact that there were damage suits that were caused by defective track and that it was out of all proportion to what it ought to have been, I don't think I would reduce facilities on that account. If the proof showed that all the passenger trains were operated at a loss, I would cut them out. I may be out of date, but I would cut the expense to fit the case. I wouldn't operate them. I would abandon the passenger trains, or cut it down, so that it would pay or quit. Before doing that I would investigate all the accounts and all of the items entering into the whole business. If bonded debts and things that the road owed were old, not incurred in the operation of the road, and that had caused a difference in the earnings and expenses, I would not take the trains off. but would leave them on.

T. G. FEWELL.

Am a resident of Meridian; have been for forty years; during my residence in Meridian the growth has been enormous; has a great many manufacturing establishments, wholesale houses and retail houses; there is a large travel in and out of Meridian. Since the building of the N. O. M. & C. and the A. T. & N. railroad travel in and out of Meridian has been largely over the railroads. In my judgment, if the six trains are taken off, the territory south of Meridian will have inadequate passenger facilities. I am a lawyer at this place and travel into other counties. If I should want to go to Quitman to attend court, if these schedules are placed as proposed, it would re-

quire leaving here about 3 o'clock in the morning or 2 in the afternoon. If I left in the morning it would be necessary to travel in the night, and if I didn't finish the business in the morning, it would be necessary to again travel at night to return home. It generally takes one day or longer to attend a case in court. On a recent occasion, I went down to Quitman. There was a bunch of us in the train. The conductor came through and a lot of passes were handed up. I used to ride on a pass myself. I had a ticket and said to the conductor that I thought it was a shame to take my money and let the other fellows ride free, and he said he thought so to, but had to do it. Some of the free transportation comes from other railroads by way of exchange. If the taking of these trains off would not decrease the fixed charges of the road and for the purpose of this hearing it seems that it would be unfair to charge overhead expenses against the operation of these trains, but you have asked me something about something I haven't any experience about at all. My personal observation is that the travel is practically the same that it has been several years before this time. The trains are always pretty well filled that I ride and I take that train out of here leaving here at seven o'clock in the morning and coming back about 9 in the night. Whether the passengers are paying fare, I don't know. They are practically loaded to capacity. I wouldn't say either that they were loaded to the capacity, but are fairly well patronized.

CROSS-EXAMINATION.

South of Lauderdale County on the M. & O. there are Clarke and Wayne Counties, and I think Greene County. The Circuit Courts hold two terms a year in each of these Counties and the Chancery Court two terms a year, and the Justice Courts are always grinding. It is my idea that employes of the M. & O. should ride on passes, and I used to ride there on a pass and do not think there was anything wrong in doing so. I have not the slightest idea what it costs the railroad to operate one of these passenger trains and don't know what they earn.

Q. If you had a certain amount of law business this year, or last year, and to do the office work when you had that amount required two stenographers, and this year your business fell off considerably, would you reduce your expenses? A. It would

depend a good deal upon why my business fell off. If I didn't handle business properly, I would say that my clients ought to quit me and I ought not to make anything out of it.

Q. And you would still continue the expense? A. No, sir, I think I would cut those down. I would feel that way, as a business proposition.

I do not know when these trains were put on but I think in the last two or three years. People traveled prior to that time in a very poor way. I think the travel has increased since the trains were put on. I do not know what the average passenger fare is, nor what the average distance traveled is on the M. & O. per passenger.

SAM HOWARD.

I represent Arnold, Hannequay, Dorr Shoe Co., out of Knoxville, Tenn., in this part of Mississippi and the western part of Alabama. I travel over the M. & O., both north and south. I haven't noticed any appreciable falling off in the travel on these trains. I travel on these trains very frequently. I would consider the passenger facilities inadequate if the trains were taken off. I work on the M. & O.—carry trunks. I work one town, open my trunks, sell my customers and leave there for the next, and jump from one to another. If I had to travel at night to make these connections, I would be incapacitated for business and the taking off of these trains would practically take me off that part of the M. & O. without spending a great deal more money and a great deal more time. I carry three trunks for six months and two the other six months and pay excess baggage on them.

Q. State whether or not the Mobile & Ohio will lose any freight as a result of this? A. Well, I couldn't say that it would, but I feel very sure that it will.

Q. In what way, explain that? A. As traveling men, we ship the freight and goods that we sell, it is only natural to route the stuff that we sell over the lines that give us the best passenger service—that is human nature.

I understand that Mr. McGriff and Mr. Ulmer represent the Mississippi Travelers and had an understanding with the manager of the M. & O. railroad that if the Mississippi Travelers would use its influence towards defeating the flat 2c rate

that was before the Legislature of Mississippi, that the Railroad Company would give any reasonable thing asked for. They stated they couldn't give adequate service at a 2c rate, but that they could give adequate service at the present rate. I understand the Commercial Travelers assisted the railroads in defeating this bill.

CROSS-EXAMINATION.

I trave' on Form Z mileage books at 2c per mile rate. If the proposed legislation had passed, it would not have affected me except it would have the effect that we couldn't have the same service. I have no personal knowledge of the agreement between the M. & O. and the Commercial Travelers. In answer to the question if in my opinion the M. & O. would lose money because as a matter of retaliation goods would be routed against it, I answer I do not know what I would do, but it would be human nature to do that, and I am supposed to be human. I have traveled in this territory ten years. In 1907 and 1908, I did not get along in traveling very well but have gotten along better since the trains were put on. If I could not have the passenger service now in force, I would prefer to have local freight train passenger service as formerly for the reason that poor service is better than no service at all. Under the proposed passenger schedule we would have two passenger trains on the M. & O. We would have two passenger trains running south on the M. & O. a day and two coming into Meridian from the south. We would have three passenger trains north from Meridian each day and three from the north. The local trains were first put on about 1909.

M. J. FEILER.

I am traveling salesman for Winner-Klein & Co. of Meridian, Mississippi. I have been in Meridian about 11 years. When the trains now proposed to be taken off were put on they increased the passenger travel to a considerable extent. The local traffic in and around Meridian is heavier now than it was in 1909, and about the same as it was in 1911. The business of Meridian is now very largely brought in and carried out over the railroads rather than the dirt roads. People in the small towns buying in Meridian, either wholesale or retail, gen-

erally ship over the railroads. I think if the trains should be taken off, it would reduce the volume of travel. I don't think the taking off of these trains would help any part of the debt or overhead charges, such as bonds, interest, etc. I think to take off the six trains proposed would leave the road with inadequate facilities and people, to travel in and out of Meridian, would be compelled to get up in the middle of the night, and if other railroads should adopt the same policy and reduce their train facilities to the same extent, it would largely destroy the retail business of Meridian and very largely increased the expense of wholesale businss. You can't make the points you now make and especially without great increase in the cost of sales, which would make the business unprofitable. It would be necessary for me to discontinue making certain points that I now make because the business I would get from those points would not justify the additional expense and result in a hardship on both the buyer and the seller.

CROSS-EXAMINATION.

The increased cost of making these towns would make it necessary to discontinue making certain points. The expense of doing the business would make me curtail it. In answer to the question as to whether that rule should apply to the Railroad Company. I answer that would depend very largely upon circumstances. The question of whether a business pays the Railroad Company should not control. The public is entitled to some consideration at the hands of the Railroad Company, and if the public is inconvenienced, or it costs more to cover the territory, the person should be taken into consideration. If it costs me more to visit a certain town than the profit I get out of it I continue to make the town but not as much as I now do under the present schedule. I would not make it as frequently. I do not think that rule ought to apply to the Railroad Company. Private business should not be considered the same as that of a corporation. In answer to the question if I think a corporation is entitled to the same consideration at the hands of the law as a private individual, I answer, certainly it should not apply; that the acts of one man should not control the convenience and benefits to others. I have talked to a number of people and they say they won't come here at all; that the

business will go through other channels, where the railroad service is more convenient. I commenced traveling in the latter part of 1906. Business was fairly good then. I guess there were a good many people coming to Meridian. We did not have these trains then, but since inaugurating the service I dare say that the travel from the small towns has increased very largely. I judge that from the fact that the merchants up and down the road say that they have been losing business themselves on account of the trains coming to Meridian, which shows that the business that formerly went through other channels is now coming to Meridian, and to a certain extent the trains operate against the merchants of those towns. If the people have no passenger facilities, they resort more to mail and that isn't as satisfactory as coming to town to buy.

RE-DIRECT.

In case the accommodations are not adequate for the purchasers, they order a great deal of light-weight stuff from mail order houses at a distance. The mail order business is a growing condition that has to be met by local merchants and to sell without conveniences will necessitate resorting to catalogs and other expense. I do not think the local people could overcome the disability of the lack of train service by resorting to the mail. A traveling salesman doesn't handle the retail trade. The shopping trade that comes here to buy their goods come in the morning and leave in the afternoon.

CLIFF WILLIAMS.

I live in Meridian and have for about forty-three years. My understanding is that the proposed scheme is to take off four trains on the south and two on the north. If these trains are taken off, as a matter of course, it would not be so convenient. A man would have to be traveling when he would like to be sleeping. If a traveling man's duty required him to make towns on the south end of the M. & O., and if he left on the early morning train from Meridian each morning, he would have to be up practically every night under the proposed schedule. The patronage of the road when I have traveled on it ten days ago, I recall, was just fair. I don't think it as generous as it was a

year ago on account of depreciation of lumber, turpentine and cotton, all three of our staples. I don't think the falling off is either great or slight. Taking off the trains would have an unhappy effect on the retail business in Meridian. If other roads follow the same policy, it would increase this unhappy condition and would lessen the circulation of money in the community. If the schedule is changed as proposed, many people who come here would not come here and the effect on the mercantile business would affect all business interests. I expect if the facilities of travel are decreased, parties living away would resort to mail order houses and if goods are ordered and shipped by mail, the railroad would be deprived of freight and the local merchant of the profit on such business and the result is that some other community is built up at the expense of this. I think that the railroad facilities or conveniences have helped very materially to build Meridian, it encourages travel and travel makes trade. I don't suppose now that there is 20 per cent of wagon trade in Meridian that there used to be. People that formerly came by wagon have acquired the habit of having it shipped by rail.

CROSS-EXAMINATION.

I think I was especially instrumental in having these trains put on. I went to Washington and went to Mr. Finley (who was President of the road) and induced him to put them on. They were not placed on by order of the Mississippi Railroad Commission. They were put on purely and simply at the solicitation of myself and other business men. I think it is a safe and sound business proposition to keep your outgo within your income. If you do not, you will suffer an inability to outgo, or your liabilities will exceed your assets. In answer to question if it be a fact that the M. & O. Railroad Company's operating revenue for July and August was $2,140,000; its operating expenses to earn that money was $1,655,000, which leaves a net revenue, before deducting anything for fixed charges and taxes, of $486,000, and the fixed charges and taxes, interest on bonds and mortgages and equipment notes were $500,485, leaving a deficit of $13,988 for two months, would I say it was necessary in that business for immediate retrenchment, I answer, if you didn't you will be like a one-legged man at a tango dance and

can't perform—that's all. In answer to a question if it be a fact that the fixed charges and taxes were $500,000 and what was deducted for these fixed charges was only interest on a reasonable bonded debt and there is no inflated value in them, would I or not say that the road that had a deficit under such fixed charges and taxes of $13,000, the taxes of the State of Mississippi being $170,000, payable in December, was in a bad fix financially and needed retrenchment, I answer, if that is a fact, it is just simply essential to the road's existence, because you can't pay what you haven't got. To the question if in addition to that there be in the treasury of the M. & O. on September 30th, $74,835.00 and approved vouchers held by the Treasurer awaiting payment of $1,027,319.09, would you say the railroad needed to take every step possible to reduce expenses, I answer if that is a fact, you are busted now. In answer to question, if it be a fact that none of those passenger trains which were put on in 1909 have paid operating expenses, would that be a fact to consider in the question of whether they would keep them on under the circumstances stated in a former question, I answer I think it would be, but I think one point that ought to be considered in making up your mind as to the justice of taking off the passenger trains is whether or not it facilitates or increases your freight business. As I understand it, passenger business is not very profitable anyhow, but as a matter of course if you are forced to pay out money faster than you get it in, it is common sense that you have to decrease your outgo or increase the income. If the facts stated as to the financial condition are true, and you ask what steps I would take as a business man. I tell you I would take them all off if I could.

RE-DIRECT.

If the running of a train produces fixed charges, I think taking them off would necessarily reduce them, but I agree to a certain extent that if the fixed charges are incurred in past debts and if they exist without reference to whether the trains are continued or not that they should not be counted against the operation of the train. These charges would remain fixed charges. If the trains pay their operating expenses, or bring in more money than they take off, I think it would be folly to take them off. I think unless you can show they are operating

these trains at a right much of a loss, they ought not to take them off. I think in figuring the expense and profits of the business that something like an annual period ought to be considered and if the earnings of the train, after taking off the expenses of operating the trains, show a profit on operations which to some extent reduce fixed charges, they ought to continue the operation.

RE-CROSS.

I think in passing on whether expense should be reduced that interest should be considered on money borrowed that went into the building and equipment of the property.

CLYDE SOULE.

I am Vice-President of the Soule Steam Feed Works and travel very little over the railroads. If the six trains are discontinued on the M. & O., I think Meridian will suffer to some extent. I don't know how much business comes over those roads in Meridian, but it would certainly make some difference. If the other roads should adopt a similar policy, it would hurt Meridian considerably. In my opinion, the elimination of trains would leave inadequate facilities to the south on the M. & O.

CROSS-EXAMINATION.

If taking off the trains would hurt business at Meridian to a certain extent, and to leave them on would probably throw the railroad into the hands of a receiver, and if those taken off did not pay, and if the railroad left two trains on to the south and three trains on to the north from Meridian, in my judgment it would be just to take the trains off.

LEO WELHOUSE.

I am traveling for Winner-Klein & Co. We have five traveling men, four of whom travel over the M. & O. Winner-Klein does a considerable business along the M. & O. Taking off the trains would be quite a detriment to their business and will be a detriment to the city of Meridian. I have talked the matter over with traveling men, and they say it will result in great

inconvenience and large expense to them. If the trains are taken off, it will break rest and sleep of traveling men to make schedules under the proposed change. I was on the committee from Meridian that went to Mobile to interview officials of the M. & O., and reported back to the Board of Trade.

CROSS-EXAMINATION.

The committee made a report, but did not recommend any suit nor did the Board of Trade pass any resolutions ordering or requesting any suit. The department store which I represent is running now at a loss but we are not cutting off any help or closing the store. I think if the passenger facilities are reduced, it will result in a loss of freight.

Q. If you didn't have the money to lose and your general business wasn't paying, and you had a special department that was losing, then would you still continue that department? A. If I figured it on the basis you figure your percentage, no sir, because you are going to lose freight when you cut off your passengers.

Q. I will ask you to see if you can answer the question more directly. If you didn't have any surplus money to draw on, and if your general business wasn't paying, and if a special department of that business was losing more than any other, and you had certain notes to come due, or a mortgage, and if you didn't meet those notes, and if you had certain taxes to pay and if you didn't meet those taxes, your property would be sold for taxes, or your business would be foreclosed; then, would you cut off those departments which were losing heavily and not paying? A. Yes, sir, I would cut off those that were losing.

RE-DIRECT.

If the trains proposed to be taken off paid more than the cost of operating them, not counting overhead expenses which would go in if they were taken off, I would continue to run the trains. In figuring whether I would take off the trains or not, I would not count against the operation of such trains overhead charges which would continue even though the trains were taken off.

EUGENE BUTLER.

I live in Meridian and am in the business of manufacturer. There is a great deal of travel in and out of Meridian and a good deal of trade from towns adjacent to Meridian. Most of the travel that comes in from these local points travel on the local trains proposed to be taken off. In my opinion, if the trains are taken off, there would not be adequate facilities of travel on the M. & O. It would injure all kinds of business in Meridian. If facilities are taken off, the travel decreases and you can't figure on making the same travel on inferior accommodations that you could on superior ones. If all the roads into Meridian should take off their facilities to the same extent as proposed on the M. & O., the consequences would be calamitous to Meridian. Every business has periods of time more or less flourishing and other times when it is not profitable. I judge in figuring railroad business that it would not be fair to take small periods of time, but you should have something like annual periods.

CROSS-EXAMINATION.

I don't know exactly the number of trains that come into Meridian over all the roads, but I think about thirty-five passenger trains per day.

E. D. SELF.

I am District Supervisor for the Mutual Life Insurance Company of New York. I travel over the State some and travel on the M. & O. both north and south. I have traveled mostly on the north end for the past year. I think they have been running four passenger trains per day each way. If the schedules are changed by taking off the trains proposed, I think it would work a hardship on Meridian and the territory that is served by those trains, causing them a great inconvenience; I know it would the traveling men. If the trains are taken off on the south end as proposed, it will kill men to keep up traveling regularly over them. I have been traveling for about twenty-five years. Under the old regime, they allowed people to travel on local freight trains and the present arrangement would be worse than it was twenty or twenty-five years ago.

A man could work only a few towns under the proposed change and if he got any rest traveling at night, he would have to go to bed at one hotel and get up in the night and go to another town and go to another hotel, and it would necessitate a lot of traveling or driving. A man traveling in this method going from one little town to another in the night and early in the morning gets cold, no fires in the hotel and has to go to bed in a cold room and it is greatly inconvenient. I have held official positions with various traveling organizations of the State; was Chairman of the Legislative Committee of T. P. A. of 1912. The Travelers Association is a federation of all other organizations of commercial travelers and has for its object better accommodations for traveling men, better facilities for traveling, hotels and livery accommodations. We used what influence we had to prevent a flat 2c mileage rate on the understanding that we would have adequate accommodations, better trains, etc., and by reason of that fact, we used our influence to prevent the passage of the two-cent mileage rate. We have always tried to be friendly with the railroads and assist them in any of those things when we can. If the trains proposed to be taken off are taken off, it would not leave adequate passenger facilities.

CROSS-EXAMINATION.

I have worked for R. J. Reynolds for twelve years and quit them, I think, about 1909 and went into the insurance business. When I was traveling for Reynolds Tobacco Company, the railroad did not have on the trains it now proposes to take off. In answer to the question, in your opinion, you say it would kill a man to travel under the conditions that would exist now if they took those trains off, I answer, I think it would be very hard on him.

Q. You were able to do it? A. It did not do me any good. I did not ride as many trains as others. I always felt a good night's sleep would be better for me and make fewer towns. It can be done that way. A man can make a living and not travel at all. I think it is a great inconvenience and hardship on traveling men for these trains to be taken off. We worked to defeat the 2c flat rate but its passage would not have affected the fare of traveling men, as they travel on 2c mileage anyway. We felt like the men who traveled occasionally would

be on a different basis from the men who traveled constantly. As to whether I would reduce the expenses if situated as the railroad is, depends upon circumstances and what the money was out for and the means of paying it. In answer to the question, if I had a certain amount to pay out of my general earnings, and I had a special part of my business which was losing money, would that not take from my general earnings and lessen my ability to pay that debt, I answer, as a hypothetical proposition, it would, of course.

RE-DIRECT.

It is a mere opinion as to whether a yearly period would control. Of course well-defined business principles wouldn't justify anybody arriving at conclusions that were final in short periods of time. If a man has reason to believe that in a period of depression business would return, I don't think it would always be wise to curtail expense. There is a general business depression now—I don't know how long it will last.

JASPER BOYKIN.

I have lived in Meridian about 20 years. For a long time I sold shoes, traveling on the road, and then went into the retail clothing business and am at present Deputy United States Marshal, Eastern Division of the Southern District of Mississippi. I have a great deal of traveling to do and am familiar with the proposition at issue as to taking trains off the M. & O., and am familiar with the way they have been operating. I don't think conditions justify a wholesale taking off of trains as proposed in this case. Under the proposed new schedule, going south from Meridian, they would have two trains per day, one leaving Meridian about 2 o'clock in the morning and the other between 2 and 3 in the afternoon. To make trips on these schedules would require one to lose a part of every night's rest. Under present conditions, you can go south from Meridian and make two or three towns and get back home the same night. If you undertake to make the towns by private conveyance, it will entail a great deal of extra expense. A good deal of travel that comes to Meridian is for trade purposes. The business houses do a large retail business. All the small places on all the roads that come

into Meridian do their shopping in Meridian. People come now largely over the railroads rather than by private conveyance. I believe if the facilities are taken away that many people will order goods from mail order houses, Chicago and other places, and it will hurt the business of the country around Meridian. Reasonable facilities increase trade. There is more travel now than there was when the trains were put on and I think the travel is increasing. In my recent travel, the local trains seem to be pretty well loaded up. The fast trains seem to be lightly filled. I have been on both local and fast trains out of Meridian at every direction.

CROSS-EXAMINATION.

I was a traveling man. In my opinion, the taking off of the trains would be very inconvenient to traveling men. There would be left trains on which people could get from place to place by taking plenty of time. I have not been a traveling salesman since seven years ago. We got about then, but it was very hard to get about. Had to hire teams to make trips and would lose part of the night in making points. There are no facilities at State Line for the turning of a train. I do not think I made the statement that conditions did not justify the taking off of the trains. In answer to the question, whether conditions justify taking off of the trains, I answer, not that many at one time, and I think trains numbered 7 and 8 should certainly be left on. That train runs south of Meridian. If the trains are losing money and do not pay the expense of their operation, I think they should be left on if it is only a temporary proposition, but if they lose money for all time it would be different.

RE-DIRECT.

If the trains put on in 1909 never had made any money, I don't see any reason why trains in 1911 and 1913 were put on except as the business might incidentally develop. Traveling men who make sales and travel these passenger trains are bound to bring business to the freight department. I think this is a result of the railroad running these passenger trains. If you want to go from Meridian to Greene County, there would be two ways to go. You can leave here on No. 3 in the afternoon

and get down to the junction about night, or you would leave on No. 1 in the morning and get there early. The junction, as I understand, is Vinegar Bend. I don't know the conditions and facilities at Vinegar Bend. Greene County is in the Circuit Court District with Meridian and witnesses living in Wayne and counties adjoining Greene have to attend court in Greene and also have to attend United States Court.

RE-CROSS.

I do not think there are any stations on the M. & O. in Greene County. Travel that formerly went on the through trains now goes on these locals. If they take the locals off they will go on the through trains. If the through trains under the new schedule stops at all stations south of Meridian, it would be a local train, but that would not help the conditions at all. In answer to the question if I referred to the condition of the leaving time at Meridian, I answer, no; I am referring to the condition of making any time on the railroad, because when you haven't got but two trains a day you can't do much traveling, absolutely knocks you out. You are compelled to take a team to make this time, which makes it very expensive.

H. F. BROACH.

I have lived in Meridian forty-four years. During that time, Meridian has grown from a village to a considerable city. I think the railroads have had a great deal to do with the growth and our factories and people all pulling together used all effort to make a city out of Meridian. Without the railroad facilities that Meridian has, it could not maintain its present growth. Meridian is the trade center of a large territory and the travel into Meridian from the surrounding country is good. I do not travel much myself. If the six trains are taken off as proposed, I do not think Meridian would have ample transportation facilities so far as the M. & O. is concerned. I believe the taking off of the trains proposed will materially affect Meridian and if all the other roads should reduce to the same extent, it would be very serious.

CROSS-EXAMINATION.

If my expenses in business were greater than my income, I would begin an investigation to see whether I could reduce expenses, regardless of whether the other fellow did or did not reduce his. If I ran a business I think I would know better about it than someone who traded with me. I think taking the trains off would be a hardship on the traveling men and also a hardship on the city. I do not know how many people travel on the trains nor what the earnings or expenses of the trains are. The arrival and leaving of trains has a good deal to do with facilities. The mere fact that the railroad officials deemed it advisable to put on these trains must have shown that travel would justify it. If they had not thought the general public needed it, they would not have been put on. It is a fact that in other business parties branch out and put in a new department in the hope of building it up, when they realize that it will not pay at first. People take chances when business is good and when the general business will permit, when they would not be justified in doing so if there was a depression. To consider whether a reduction was necessary, I would want to know what influence this branch of business would have on the general line of business. I do not think the railroad would take off the trains unless they thought it was going to save expenses. I do not think they would want to take them off it would result in losing freight revenue.

RE-DIRECT.

In answer to the question if a man was operating a railroad and figuring that it was necessary to get his rates increased, and if to secure that required consent of public authority, and if a plea of poverty would probably affect the authorities, is not there a likelihood that the trains could be taken off temporarily to effect a purpose of that kind, I answer, "Let me see if I understand your question; do you ask me whether I believe they would do that, or whether it would be possible to do that?"

Q. Whether that would be likely to influence a man who desired to bring about that result? A. You want me to answer that on the man who would like to bring about that result?

Q. Yes. A. Of course, if he would like to bring about that result, yes.

I think there is a difference between ordinary business and a monopoly, and the same rules do not apply to each. I think a railroad has a large influence on the prosperity of communities and should not have the same full control over its business that a private corporation or individual would have.

RE-CROSS.

I do not think the M. & O. in the past has been unfriendly to Meridian, but the city and the railroads have gotten along on peaceable terms, and worked for each other's interest.

W. D. HAWKINS.

I have lived in Meridian 24 years. I have been in business during that time and during that time Meridian has had a steady growth in business and population. The fact that Meridian has been a good center has contributed very largely to its growth. To continue to grow, it must have good facilities. Years ago, Meridian had a large wagon trade, people coming from fifty to seventy-five miles and the streets were crowded with wagons. That has largely passed away. Stuff is largely shipped out over the railroads now and under present conditions Meridian is more dependent upon railway facilities than heretofore. I don't think the M. & O. would have adequate facilities if the trains proposed to be taken off are taken off, and if all other railroads did the same it would have a very damaging effect on Meridian.

CROSS-EXAMINATION.

I am in the real estate business. Do not travel a great deal on the railroads. Meridian has grown considerably and the growth has been pretty uniform ever since I have been here. I base the statement that Meridian would not have adequate facilities on the growth of the town and on the fact that we don't get the wagon trade we used to and that the people travel more by rail; that it takes more to satisfy and more to do us than formerly; means of communication and travel are more rapid than formerly. There would be trains enough to transport the people if you gave them time to get away. I think

those that wanted to go could find accommodations, but they could find more accommodations with all the trains on.

Q. Then it is largely a matter of convenience? A. Yes, sir.

Q. It is not a necessity? A. Well, it is owing to what you regard a necessity. In the light of modern conveniences and modern travel I consider it a necessity, for the convenience of the people, not their health or safety or anything of that kind. If we transact business as we transact it now we must transact it with rapid travel.

We have more business now than we had when the trains were put on. I think we have more building going on in Meridian now than any one town in Mississippi. I couldn't say that the mere fact that the trains have never paid their actual operating expenses, if it be a fact, or that the railroad owes a great deal of money and is losing money would justify it in taking off the trains. There is more than one way for a railroad to make revenue. I can hardly see how it would be justified in discontinuing the service. It is pretty hard to put yourself in the other fellow's shoes and I would very probably take the same view that the company does if I were in its place. I think the question of the duty you owe the public as a common carrier ought to figure very largely on whether reductions should be made.

RE-DIRECT.

In estimating whether any business is a paying business, I think something like annual periods should be taken. Nearly businesses, and especially business of great magnitude, have periods where they make money and periods where they lose money. Taking annual periods, if the business was not paying, I think there should be some retrenchment.

A. W. KAYE.

I am engaged in the business of bottling soft drinks. I have been in Meridian fifteen and one-half years. I am not very familiar with the railroad situation but am somewhat familiar with the passenger trains the M. & O. now operate. I think taking off trains would have a decidedly bad effect on

business in Meridian, especially the wholesale houses, and would inconvenience the traveling public a great deal. Persons that travel on the M. & O. would have to spend a great deal of their time at night getting up and catching trains. I think taking off the trains would leave inadequate facilities.

T. A. THORN.

I am engaged in the hotel business at Meridian. Have been in Meridian about nine years and am familiar with the facilities of travel into Meridian over the railroads. I think taking off the trains would have a very depressing effect on business. If other roads should follow the same policy, it would have a very depressing effect.

Q. If business was generally to retrench to the extent indicated in that line of traffic, would that or not bring about the greatest panic that this country has ever had, in your judgment? A. I expect it would.

CROSS-EXAMINATION.

It is always the idea of business men to cut expenses where it is practical. I have lost money at times for a period when I didn't cut expenses. I think if I was losing money and didn't have the surplus money to meet a deficit, I would try to reduce expenses in some way, and the fact that other men were not reducing expenses would not prevent me from reducing them. I base the statement that Meridian would have inadequate passenger service on the number of people that would necessarily travel and the time of the departure and arrival of trains.

RE-DIRECT.

I would not reduce my expenses as a hotel man by taking away the food and cover of my guests. I haven't had occasion to observe the passenger business much lately but I haven't noticed any falling off in my hotel business. Most of my guests are out-of-town guests. I do not know whether taking off the trains would prevent people from traveling or not and do not know whether the trains are paying expenses or not.

EDGAR FEIBELMAN.

I am engaged in the wholesale cigar business in Meridian, being a member of the firm of B. M. & E. Feibelman. Our firm has one traveling man and myself on the road. I have not noticed any appreciable falling off of the passenger business on the M. & O. In answer to the question as to what effect the trains would have on a person traveling the south end of the M. & O., I answer it would affect him, he would have to be up half of the night to catch a train. I think the taking off of the trains proposed would not leave adequate passenger facilities. I only make short trips now. I have traveled altogether about eighteen years. Prior to the putting on of the trains now proposed to be taken off, I could ride the local freight trains, which could not be done under the proposed arrangement.

CROSS-EXAMINATION.

Meridian is now larger than it was when the former conditions existed. Meridian was about six or seven thousand smaller in population in 1911 than it is now. The increase in business in Meridian has been gradual. There was a period of time from the taking off of the freight train service to passengers and the putting on of the passenger trains proposed now to be taken off. In the past few years most of the goods shipped or taken out of Meridian are carried over the railroads. I suppose the wagon trade has decreased 75 or 80 per cent and this trade is now taken care of over railroads.

A. B. PATTERSON.

I am General Manager of the Street Railway, Gas & Light Company of Meridian, and have lived in Meridian nine years. During that time the population has increased from about 14,000 to 25,000 or 26,000. Our own railway system has grown and developed considerably during that period. Since that time also, there has been a railroad built west of Meridian, and east of Meridian, both of which materially cut off wagon trade. The country wagon trade is much less than it used to be in Meridian, and most of the cotton brought here is now brought over the railroads. The street railway traffic has increased during that period of time.

CROSS-EXAMINATION.

The Meridian Street Railway has never paid. We have a service which we have to maintain to maintain our charter. Assuming that there is no charter provision of the M. & O. that requires them to furnish the facilities which the proposed trains furnish, and that they have not paid operating expenses, and if taking off the trains would contribute more to the revenue, I should think it would be reasonable to take them off, and if they are operating at a loss and if taxes are due, I should say it would be contributing largely to the tax fund to take the trains off.

RE-DIRECT.

Q. In figuring, Mr. Patterson, whether you would discontinue service like the operation of a car, in determining whether the operation of the car was a losing proposition or not, you would not figure for that purpose the fixed charges on that car, would you? A. Well, I will tell you how we figure everything—we have three departments. We have a certain proportion of general expenses to be distributed amongst all. Of course one car, it doesn't look like you would add any extra expense, but you can't add any additional operation without adding additional expense. It might not come directly within the scope of general expense in that one item, might go into some minor account, but in the long run it will add to the general expense, and it is the custom, as I understand it, for all commissions to distribute the expense proportionately to the amount you have in operation, that is the just way they have adopted in arriving at these expenses.

Q. But if taking off a car on your line wouldn't reduce your taxes and wouldn't reduce the bonded debt and the interest when you took it off, wouldn't enter when you took it off in your mind or not would it, because you would still have that to pay when you took it off? A. No, I shouldn't think you would figure that off. I should not in a case of that kind if that car was paying over and above its per cent of the damages, its per cent of the increased maintenance of the track and roadway and the labor and all of those things which are made necessary by the operation of that additional car. If it made additional money over that I shouldn't think I would consider

the general expense in that one item, but I will call this to your attention: that if you kept on cutting off and cutting off till you go down to a point where you didn't have any cars in operation, then you would have this general expense and no earnings at all. In other words, there is a breaking point.

Q. Well, if you had a car that without counting your bonded debt and tax and which you would have to pay anyway, which was an accrued liability, and the car paid you, say, five dollars a week profit, not counting its pro rata of that, you wouldn't under those circumstances take that car off, would you? A. That is if we had the car anyway and had the track and we were making five dollars over and above what we would make if it was staying in the barn, our policy is to operate it on that basis.

W. E. HOPPER.

I am engaged in the furniture and undertaking business in Meridian. I have lived recently five years in Meridian. Prior to five years ago was out of Meridian, but was in Meridian during the earlier period. I have been with the M. & O., and before I came here was running between Artesia and Montgomery as a passenger conductor. I am familiar with the schedules of the M. & O. and if the trains proposed to be taken off are taken off, I do not think Meridian would have adequate passenger facilities. I don't know what it costs to operate passenger trains, and don't know whether the particular trains are paying or not.

R. D. SMITH.

I am employed by the State of Mississippi and work under the Attorney General. Prior to this employment, I was with the Alabama, Tennessee & Northern Railroad Company as Freight Claim Agent. Prior to this employment I had been with the L. & N. just a little while, part of the time handling claims, and a while in utility work; prior to that time I had some experience in the mechanical and operating departments, store room work, time-keeper and such. I began with the Santa Fe Railroad. Have been in the railroad business four-

teen or fifteen years. I am now doing special railroad work for the Attorney General. I have made some inquiry and investigation as to the trains the M. & O. is contemplating taking off. The trains proposed to be taken off are three-coach passenger trains—medium-size engine. I have made some estimate of the cost of operating a train of an engine and three cars from Meridian to Mobile, Alabama, 135 miles. I made this in conjunction with Mr. M. C. Moore, Rate Expert of the State Railroad Commission. The cost of operating a train is, first, the engineer, which costs 4 1-4c per mile, which I understand is the contract between the M. & O. and its engineers; this would amount to $5.74 on a distance between Mobile and Meridian; the next item is 2 1-2c per mile for firemen, amounting to $3.38 between Meridian and Mobile; the next item is 2.9c per mile for conductors, amounting to $3.92 for the distance from Meridian to Mobile; the next is 2.1c per mile for baggage master, amounting to $2.84 for the said distance; the next is flagman, at 2.1c per mile, amounting to $2.84 for the said distance; the next item is $40.00 per month for a porter. It would take five tons of coal at $2.00 per ton; three tanks of water at 50 cents per tank; 13 cents for valve oil; 20 cents for engine oil; 10 cents for headlight; 30 cents for water and ice on coach; 25 cents per coach for cleaning and sweeping, amounting to 75 cents; oil and waste for cars amounting to 50 cents per trip; about $1.00 per trip for lighting passenger cars, making a total of $34.48 per trip as the cost of operating a train. It would amount to the same on the return trip from Mobile to Meridian. I do not figure overhead charges and do not think they should be included because they will exist if the trains are taken off. I consider the foregoing a reasonable charge for operating a train based on my experience as a railroad man. For convenience, I submit tabulated statement showing the cost, less overhead charges, herewith:

Estimated cost of operation of a passenger train consisting of engine and three coaches between Meridian, Miss., and Mobile, Ala., being a distance of 135 miles.

For engineer 135 miles at 4 1-4c per mile	$ 5.74
For Fireman 135 miles at 2 1-2c per mile	3.38
For conductor 135 miles at 2.9c per mile	3.92

For baggage master 135 miles at 2.1c per mile	2.84
For flagman 135 miles at 2.1c per mile	2.84
For porter 135 miles at 1c per mile	1.35
For coal, 5 tons at $2.00 per ton	10.00
For water, 3 tanks at 50 cents each	1.50
For oil (valve), 2 1-2 pts. at 40 cents per gal.	.13
For oil (engine), 5 pts. at 20 cents per gal.	.13
For headlight carbon (1)	.10
For water and ice for three cars at 10c each	.30
For sweeping and cleaning cars at 25c each	.75
For oil and waste for cars	.50
For lighting cars in train	1.00
	$34.48

Average cost per mile, 25.54 cents.

CROSS-EXAMINATION.

The Alabama, Tennessee & Northern Railroad runs from Calvert, Alabama, to Reform, Alabama. I have never had any direct connection with the accounting department of any railroad.

Q. What has been your experience in the matter of what was the proper charges against the operation of a train? A. In some solicitation of the passenger business.

Q. Is it possible, in your opinion, to divide, accurately the cost of operation between passenger and freight? A. Yes, sir.

Q. Do you know whether or not the Interstate Commerce Commission has ever ordered that done? A. I am not positive. I think they have, though; I am pretty sure.

I have been informed that the L. & N. Railroad divides its passenger and freight business. I have never heard the matter discussed by any other railroad. I consider the L. & N. Railroad a well-managed railroad. I understand they figure the cost per mile to operate passenger trains at something above a dollar, which includes the overhead expenses. I would consider a dollar per mile for a passenger train a fair estimate of cost of operation, including overhead charges. In figuring the rates of pay of employes on the trains I figured it at mileage run. I do not know whether under the contract between the M. & O. and the

conductors they have any minimum mileage. If it is a fact that they have a contract providing a minimum mileage of 155 miles, and if it be a fact that other departments have contracts of minimum mileage, the railroad would have to pay up the minimum, regardless of the miles run. If the M. & O. has such a contract my statement would be incorrect as to the amount of pay they would draw.

Q. Now, Mr. Smith, you say you don't think the overhead charges should be included in this estimate? A. No, sir.

Q. What do you include exactly in that term, overhead charges? A. Bonded indebtedness and the portion of the salary of the agent, agent's help, telegraph help, telegraph operators, porters, section men, bridge men and bonded indebtedness and everything of the kind, you know.

Q. And you don't think any part of a station man's pay should be charged up to that train? A. I say that if the overhead expenses are included a portion of it would be charged.

Q. Is it proper, in your opinion, to charge such items as you have mentioned up to the operation of this train in drawing the figure here whether it paid or not? A. I don't understand you exactly.

Q. If you were endeavoring to ascertain whether or not a particular train paid a railroad company to operate it, would you include in your estimate of cost or operation any such charges as you have mentioned? A. No, sir.

Q. You would not? A. No, sir.

Q. Well, you would not? A. No, sir.

Q. Well, against what kind of trains would you include that charge? A. Such trains as were in operation.

Q. Wouldn't this be a train in operation? A. It would be a train in operation; it would depend on the purpose for which you were making this estimate whether or not you would include it in my estimation.

Q. If you didn't include it against this train, would you charge it all against the remaining trains? A. I would charge it against such trains as were in operation.

Q. If you had to pay overtime to a station agent because of having these trains on would you think that was a proper charge against these trains? A. If these trains brought about that overtime it would be, I should think.

Q. If you had to do extra—if you were put to the expense of extra telegraph service because of these trains being on, would you think it was proper for that to be charged against them? A. If that charge was directly due to that individual train or trains I think it would be.

Q. If these trains injured any persons would that be a proper charge against them? A. It would, I would think.

Q. If these trains injured any stock would that be a proper charge against them? A. Yes, sir.

Q. If the equipment on these trains got out of repair would it be a proper charge against them the cost of mechanics' time? A. Yes, sir.

Q. If there was any wear and tear on this particular equipment would that be a proper charge against them? A. Yes, sir.

Q. If the Railroad Company had to buy equipment for these trains and owed interest on equipment bonds to purchase the particular equipment used in these trains, in your opinion, in figuring up the cost of operation to decide the question of whether they were run at a profit or not, would it be proper to charge against these trains any of that interest on that particular kind of equipment bond? A. If the trains were in operation?

Q. Yes, sir. A. I do.

Q. Does a train-master have charge of these trains as well as other trains? A. Yes, sir.

Q. Part of his time and duty is taken up with directing these trains, isn't it? A. Yes, sir.

Q. And in figuring the question of whether these trains paid or not, you wouldn't consider any part of his salary a proper charge against him? A. I would if the train was in operation.

Q. Well, a train is in operation when you are arriving at the question of whether or not it pays or not, isn't it? A. Yes, sir; if you are arriving at the question of whether or not it pays to operate it, requires it to be in operation.

Q. Superintendent's salary and other salaries of that kind are in the same— A. Prorated.

Q. Then this figure that you have of 25 54-100 cents per passenger mile per train, does that, in your opinion, include all the items that should be included in endeavoring to correctly

arrive at whether or not these particular trains pay more than the cost of operation? A. Under the circumstances in this case, I think it would.

Q. Will you explain that to me, please? I don't understand it. A. Well, with the exception of that cost there, it wouldn't alter the overhead expenses whether the trains run or not.

Q. If these trains didn't run it would alter the expense of any cattle they would kill, wouldn't it? A. It would more than likely decrease the cattle killed.

Q. Let's put the question over again. If these trains killed cattle wouldn't you consider that in figuring the question of cost of operating these particular trains for the purpose for which you have stated? A. Proper to consider that as a—consider the cattle killed as a part of the cost of operation?

Q. Charge against the train? A. I would. I testified a while ago I would consider that an item.

Q. You say then that you wouldn't include anything else because the other charges wouldn't be altered by taking off the train? A. With the exception of those items there, it wouldn't, as I say, affect the other charges at all; it would go on just the same.

Q. Then would the other charges for the cattle killed go on just the same whether you took it off or not? A. Yes, sir.

Q. The cattle killed by these trains would go on just the same or not? A. The train couldn't kill cattle if you took it off.

Q. You wouldn't consider that as a saving the average number of cattle they had killed as an element of expense against them? A. It would go as an overhead expense.

Q. It wouldn't go against these trains? A. Not against the operating expense as itemized there.

Q. Would it be properly charged in the element of this figure which you have gotten up? A. No, sir; it wouldn't be properly charged in that estimate.

Q. Mr. Smith, if you were endeavoring to ascertain whether it would save money by taking off this train, what would you include in the statement of expenses of that train? A. Such charges as I have itemized there.

Q. And you would not include any charge whatever of

personal injuries or fire loss that might have been directly caused by these trains? A. No, sir; I don't think I would.

Q. Mr. Smith, do you know what these trains earn per mile? A. No, sir.

Q. Suppose the revenue from these trains per mile was 76 cents; how would you arrive at what your profit was per mile for that train? A. How would I arrive at the profit?

Q. Yes. A. If I wanted to figure the profit of that train I would take the operating expenses.

Q. You wouldn't deduct from the 76 cents simply this item you have here, would you? A. Under certain circumstances I would.

Q. If these trains earned, say, 76 cents per mile, and you were endeavoring to ascertain whether or not they paid anything over the cost of operation, what would you deduct from the 76 cents per mile? A. Actual expenses of operating if the equipment had already been purchased, I would figure on the actual expense of operation.

Q. Is that the figure you have here? A. Yes, sir.

Q. Are you working for the Attorney General at this time—for the State, rather? A. Yes, sir.

Q. In figuring up what it costs to carry freight, Mr. Smith, in order to arrive at what is a proper rate, what do you deduct from the earnings per car, say, or per ton per mile, of that freight? A. I don't exactly catch your question.

Q. Well, if I had a train load of freight of one kind and you were seeking to ascertain whether or not that freight between two given points at a particular rate paid a fair return to the Railroad Company for transporting that freight, what deductions would you make from the total revenue from that train in order to ascertain whether that freight was paying more than the cost of handling? A. I ask you if you said less than the cost of handling?

Q. My question was whether it was paying more or less than the cost of handling, if you were just trying to ascertain— A. Whether or not it was a profitable business handling that individual freight?

Q. Yes, sir. A. You would have to get the cost of handling to find whether it was or not.

Q. What would you include in the cost of handling it?

A. The cost of fuel, material and employment, and have that figured on the volume of business, the tonnage.

Q. Include any terminal expense? A. I hardly thought you would on any one class of freight.

Q. You wouldn't make that class of freight bear any terminal expense at all? A. You couldn't very well figure any expense on any one commodity.

Q. That would be some item of deduction? A. That would be some item of deduction.

Q. Mr. Smith, if you figure that an agent sold a ticket for one of these trains that his time would be an item of the cost to the railroads to ascertain whether it cost more or less than it earned? A. I testified a while ago I wouldn't include that in making a total cost of operating the train, I wouldn't have to——

Q. What does this include? A. That includes the actual cost of operation.

Q. And you don't consider the station agent's time who sells a man a ticket for this train any part of the actual cost of operation? A. Not if you necessarily have to keep him in employment anyway.

Q. Suppose you had so many trains that you would have to employ an extra ticket man to sell for this man, then would you do it? A. Yes, sir; include it.

Q. Then in your opinion a man would have to be employed solely for one of these trains in order for you to make his salary or his time, in order to make a proper deduction from the earnings to ascertain whether it was paying more than the cost of operation? A. In a case of that kind I would.

Q. Did you or not figure in this cost anything for overtime? A. No, sir.

Q. Would that be a proper element? A. If any overtime was brought about it would.

Q. Did you figure anything in this estimate for brasses for those cars? A. No, sir; it was not included.

Q. Do you think that should be included? A. If there is any way you can arrive at what it would cost per mile, but you would have to take a good, long operation of the car in order to get it. It would be very insignificant, the cost of the brasses.

Q. What would be the difference between the cost of the brasses and any other part of the engine and car? A. What do you mean?

Q. You just admitted that if there was any way to arrive at it if in these particular trains you use up brasses that probably ought to be charged for. Now I am asking you the difference in using up by these trains of brass and using up by these trains of engine and cars or any other part of equipment? A. Be practically the same.

Q. Have you included any charge in here for using up any part of the equipment? A. I think I figured some there. The only thing is the headlight.

Q. That simply is the carbon? A. Yes, sir.

Q. What would be the difference between the using up of any part of the equipment and the using up of the track? A. Wouldn't be any.

Q. Have you included anything in there for that? A. No, sir.

RE-DIRECT.

If a telegraph office is maintained as a commercial office and as an office with the regular train business would be handled. I think it would be prorated between the two. In case where a railroad company contracts with the telegraph company by which the railroad gets free telegraphic service. I don't see that it should be charged against a train.

M. C. MOORE.

I am engaged as rate expert for the State of Mississippi. I was elected to this position in April, 1913. Prior to that time, I worked with the State under the Attorney General and prior to that time I was with the Board of Trade of Meridian as Secretary; prior to that time I was with the Q. & C. Railroad System at Meridian from January, 1892, to September, 1902, and prior to that was with the E. T. V. & G. Railroad as Chief Clerk at Meridian from March, 1887, to December 31, 1891; prior to that time was with the E. T. V. & G. Railroad from the first day of September, 1884, until I came to Meridian. Prior to that time I was agent on the V. & M. Railroad at Hickory, Miss. I

assisted in making the estimate given by Mr. R. D. Smith in this case. I think the estimate made is reasonable. In figuring the cost of operation for purposes of determining whether trains should be continued or discontinued, I do not think the overhead charges should be counted as costs. Not counting the overhead charges, I think it would cost about $34.48 each way to operate a train with three coaches from Meridian to Mobile. In my opinion, if the trains are taken off, it will not leave adequate facilities for passengers at Meridian.

CROSS-EXAMINATION.

Q. Mr. Moore, what experience have you had in figuring up the cost of operation of a train per mile? A. Well, that is about all the experience I have had in figuring up the cost of operation of a passenger train, sir.

Q. The drawing of this paper? A. Yes, sir.

Q. Did I understand you to say, correctly, that you would not include in this cost per mile any charges which would not be affected by the taking off of these trains? A. Yes, sir.

Q. You would include, then, all charges which would be affected by the taking off of these trains? A. Yes, sir; I think that would be proper.

Q. Suppose, Mr. Moore, an agent is allowed overtime when he is required to meet a train during his dinner hour, would you consider that a proper charge if an agent had to meet any of these trains during his dinner? A. Well, I think if the railroad contracts with an agent of that kind it would be proper to allow it, but it occurs so seldom I don't think it would be proper to put in that statement.

Q. If it occurred daily would you think it would be worth while to put it in the statement? A. Yes, sir; if it occurred daily or not so often maybe, I think it would be proper

Q. And then it is correct, you let it out because it was small. A. I didn't know your agents were allowed anything for overtime at all.

Q. Do you, in fact, know anything of the cost of the operation of these trains over the M. & O. Railroad? A. Well, I feel quite sure of the correctness of that statement as a whole, approximately correct. Of course we can't know a great many things—we couldn't swear to them unless they were things that

we had experience with, but the information has been gained from entirely reliable sources and I believe that that statement is approximately correct.

Q. And that don't answer my question. I asked you if you had any personal knowledge of the cost of the operation of these trains on the M. & O. Railroad? A. I think my answer covers the case.

Q. Well, I would like for you to answer the question if you can. It is just a plain question. Have you or not any personal knowledge of the cost of the operation of these particular trains on the M. & O. Railroad? A. Of course I am not working for the M. & O., I don't make settlements with any of those people. I don't see them receive their pay, and therefore I haven't any personal knowledge of the amounts that they receive. But I have information from entirely reliable sources they are paid according to the rates shown in that statement and that the other figures shown therein are approximately correct I am fully convinced.

Q. Now, you said that if any charge would be directly affected by taking off these trains that you would include it? A. Yes, sir; I think that is proper.

Q. Would the cost of furnishing brasses for these cars be properly included? A. Yes, sir; I think so. But I consider the amount quite insignificant, though.

Q. Do you know the cost of brasses? A. Why, I just have an idea of it; I don't know just what it costs.

Q. Would you mind stating what is the cost of a car brass? A. No, sir; I don't know. I know about what brass is worth, but I don't know what they charge you for those brasses.

Q. Do you know how often you have to renew a brass in a car? A. No, sir; I couldn't say just how often.

Q. Would it be proper to include any other cost of repairs directly made to any of the equipment in all these trains? A. Well, I have been informed—I haven't personal knowledge on the subject, but I have been informed that if train equipment stands idle for thirty days or longer that the deterioration exceeds the wear and tear of operation.

Q. Who informed you of that? A. Well, the last man was Mr. Smith.

Q. Which Mr. Smith? A. Mr. R. D. Smith.

Q. The gentleman who has just preceded you on the stand? A. Yes, sir.

Q. Now, Mr. Moore, if these trains earn 75 cents per mile and you were endeavoring to ascertain whether it paid the Railroad Company to operate them, what would you deduct from the 75 cents, merely this figure of 25.54? A. Yes, sir; now I will call your attention to one thing, an item which I think will overcome all things you have in mind, wear and tear. I have added there the salary for the baggage man, who serves as express man also and no allowance is made for that.

Q. Do you know whether they handle express on those trains? A. They do on some of them, do they not?

Q. Do you know whether they handle express on the particular trains you referred to? A. I don't know just what trains you propose to take off.

Q. Then you don't know whether those trains handle express, do you, if you don't know which ones we propose to take off? A. No, I really couldn't say just which ones do handle express.

Q. Mr. Moore, if these particular trains kill cattle and you were figuring up the cost of operating those trains and trying to ascertain whether the amount earned was sufficient to pay the cost, would you include that item of stock killed? A. If those trains kill cattle that would not be killed if those trains were not run, I think it would be proper to apply that to the cost of operation.

Q. You haven't applied it here? A. No, sir.

Q. If they killed people wouldn't the same rule apply? A. Yes, sir; I would qualify that a little bit, though, because those same people might be killed if they were riding on another train; they might ride on another train.

Q. But if there was an accident to one of these and there wasn't an accident to one of the others, would you include that kind in this expense? A. I rather would include the insurance paid to protect you against loss in such accidents.

Q. If we haven't any? A. You ought to have.

Q. But if we haven't. Suppose these passenger trains that you are referring to delayed other trains, would it be right to charge up against these trains any cost of the delay to the other trains? A. I don't think so, sir.

Q. Why? A. You can't foresee delays. Those things may occur and they may not. You can't arrive at something in the future that is simply to come about as an accident.

Q. Then it is your judgment as an operating railroad man that it hasn't happened in the past that any of these trains would have delayed other trains? A. I have no data on that sort of thing.

Q. As a matter of fact, Mr. Moore, do you consider yourself an expert on what it would cost to operate a passenger train per mile? A. I consider myself expert enough to make up this statement showing the approximate cost of operation of that train between Meridian and Mobile, from a reliable information which has been done.

Q. I understood you to say the only experience you had had in doing it was in making up this one statement? A. I hadn't been employed by the railroads to do that specific kind of work.

Q. And your expertness grew out of the compilation of this one statement, on information which you believe to be reliable obtained from other parties? A. I am just in the same boat that you are in that respect; you don't pay those men.

Q. That don't answer my question. I will ask you to please answer my question. I am not fencing with you. I am trying to get at your knowledge. A. I have stated that I have not had any experience in that business till I made this statement.

RE-DIRECT.

I would think the trains proposed to be taken off would carry express because other trains did not stop at those points.

DR. F. M. SHEPPARD,

being produced before the Court as a witness for the defendant, and duly sworn, testified as follows:

My name is F. M. Sheppard. I am a member of the Mississippi Railroad Commission from the Southern District of Mississippi.

Q. Now, Doctor, state to the Court the facts as you understand them, and that have influenced you as a member of the

Commission in making the orders now in review—what facts you had to sign that order on?

A. The needs of the people for the passenger service was the main fact. We also took into consideration the earnings of the passenger trains as set out by the witnesses for the Mobile & Ohio Railroad Company. Also the expense of passenger trains as set out by them. We found that the Mobile & Ohio Railroad Company claimed the cost of operating of a train per mile to be about forty cents, actual cost. We also heard their statement to the effect that all charges considered the average cost of a passenger train would be about a dollar per mile, per train mile, but the actual cost would be about forty cents, a difference in actual cost and the entire cost, which includes what they are pleased to term "overhead charges," makes up the amount of the difference between the forty cents per train mile and the dollar. In their evidence before the Commission it was never brought out that for any month of this year, or any other year, the average cost per train mile, I mean the average revenue per train mile, on all of these trains, was less than forty cents. In other words, every month in the year that an estimate was made, or an accounting given to the Commission, the earnings on their trains was more than forty cents per train mile. Of course, they represented that there is an actual loss in operating these trains because of the failure of these trains to meet the overhead charges, which is interest on bonds and interest on stock and some other matters, as the Commission understood it.
Mr. Prince:

You are mistaken in that. What we stated—

Dr. Sheppard:

The Commission understood that the forty cents was a pure operating expense and the dollar per train mile we thought must include the overhead charges. Then if the trains complained of earned more than forty cents per train mile, evidently they were earning more than actual expense, according to the testimony set out before us. Then there were a number of witnesses that appeared before us, giving us reasons for the need of these trains, for to leave them without these trains which were taken off would leave the people of that territory with very little passenger accommodations. From Meridian south there

would be left two trains south, and two trains north——

Judge Walker:

Are those all through trains—have they made all their through trains local?

Dr. Sheppard:

That was the intention, and it was stated before the Commission that the through trains would become local trains and make all the points, but since this new schedule has gone into effect there have been complaints that certain stops or places where the local trains did stop have been cut out of the through trains, and there are a few, not many I say. But it was the intention stated to us by the representatives of the Mobile & Ohio Railroad Company to make these through trains local trains and make all the stops. But I was speaking of the passenger service—one train south would leave Meridian about 3 o'clock in the afternoon, and one would leave Meridian for the south in the night time, or before day, and since these trains have become local trains north of Meridian as well as south of Meridian, they have failed to make the schedule anything like rasonable for the most part, and I am reliably informed, and the Commission was informed, that these trains are from three to six hours late frequently, making the night train, or the one passing at 3 o'clock in the morning, come along about 6 o'clock, and makes the day train a night train for the territory south of Meridian, which gives to the people traveling south of Meridian, in the judgment of the Commission, very poor passenger service. The train service north of Mobile, passing through Meridian—one train leaves at 11 o'clock and passes through this territory anywhere from 1 to 3 o'clock in the day time. That train is usually on time, not having so far to run before it gets into Mississippi. The other train leaves Mobile at 8:10 and gets up into Mississippi about 10 o'clock, and passes through this territory complained of south of Meridian in the night time. Therefore, it was seen by the Commission that the Mobile & Ohio Railroad Company, after taking off these trains south of Meridian, would give two trains each way daily, but would give only one day train each way daily, and to the Commission it seemed that this was inadequate service, and from the testimony that was put before the Commission by different people interested, different traveling people, it was believed that the taking off of these

trains should be prevented, that it would cripple the passenger service that the Mobile & Ohio Railroad Company owed to the people of that vicinity.

Q. Did not the testimony you heard show that business at Meridian had been so changed and adjusted that it was largely dependent upon the schedules to preserve the business interests of Meridian?

A. Yes. It was complained that there were a great many traveling men representing wholesale houses traversing territory to the south, and they could not work their trade, could not handle the trade, and that business would leave Meridian for that reason and would seek other points.

Q. Now, Doctor, I will ask you if the Commission did not have a statement before taking this action, made up by a competent man in the employment of the State, showing that from papers submitted that the trains could be operated at an actual profit on the showing made before you?

A. I did not catch your question.

Q. I will ask you if the statement of Mr. Smith, in the employment of the Attorney General, made up on the cost of operating trains—if that was before you?

A. Yes, sir.

Q. And did not that show that the actual cost of operating a train was considerably less than the revenues which they showed they derived from the trains?

A. They did.

We further believed in this matter that taking off the passenger trains would reduce the number of passengers that would travel on the Mobile & Ohio Railroad, and that they, themselves, would lessen their own passenger revenue by the taking off of these trains. In other words, we did not believe that the total passenger business would be as great on account of the lessened passenger accommodations as it was before, and we also believed that it would injure their freight business, whereas they showed to us from their viewpoint that the loss would be $10,000.00 per month to operate these trains, we concluded that there might be a loss that could not be calculated, and that their loss would not be as great as represented by the Mobile & Ohio Railroad Company before us, and this loss, if I may be permitted—it might be a little out of place—but the loss that appears on the

passenger trains that run from Meridian to Okolona is accounted for from the fact that the through trains have become local trains, and people arriving on the through trains rather than on the local trains, which were local trains before, and that accounts for the loss in revenue, and is not a condition that exists from the war, or any other panicky condition, in the minds of the Commission.

Q. You are familiar with the territory between Waynesboro and Okolona, on the Mobile & Ohio Railroad?

A. I am fairly so.

Q. State from your observation and judgment and experience as a Railroad Commissioner, charged with the duty of looking after those trains, if those trains from Waynesboro would——

Judge Pardee:

State your question, Mr. Ethridge. Don't use all of that, please.

Q. In your judgment, pay and more than pay operating expenses?

A. You mean an additional train than from what is now running on the Mobile & Ohio Railroad? I think one train would earn more than forty cents per train mile, yes, sir.

CROSS-EXAMINATION.

Q. Doctor, do you think the Mobile & Ohio Railroad Company ought to run these trains if they do not pay?

A. What do you mean by do not pay?

Q. If the railroad does not take in as much money as it costs to run them?

A. Do you mean if they do not take in forty cents per train mile?

Q. I asked you if the railroad does not take in sufficient revenue per train mile to pay the cost of operation.

A. I cannot answer that question intelligently unless you separate it, and let me know what expense——

Q. I am asking you as a matter of principle. Should the Mobile & Ohio Railroad Company, or any railroad in the State of Mississippi, be required to run a passenger train when it does not pay the operating expense?

A. When it does not pay the operating expense, I think not.

Q. (Court) You mean by that the train employes, oil, supplies, etc?

A. Yes, sir.

Q. (Court) Just actual cost of operating?

A. Yes, sir. That is my view of it.

Q. You would not include in it any expense of stock killed by that train?

A. I do not think that stock would be killed ordinarily.

Q. You would not include people injured on that train.

A. They ought not to be injured.

Q. Would you include brasses used by those trains?

A. Yes, sir, if used by those trains.

Q. You would include brasses?

A. Yes, sir.

Q. You would not include other material?

A. Yes, I would include material used up by those trains, and wear and tear.

Q. Then you have gotten away from what you said just before.

A. I meant to include those things as direct expense. I have just said I would include something on the wear and tear.

Q. Was the man who testified about the cost of running trains named Smith?

A. We had his testimony before us.

Q. I will ask you—he was testifying as an expert as to what it cost, was he not?

A. Yes, I think so.

Q. Do you recall as to what he said his experience was?

A. I do not remember it.

Q. You do not recall that he said he was working for the A. T. N. Railroad?

A. I believe so.

Q. Do you remember the figures that he said it would cost to operate a passenger train per mile?

A. About twenty-six cents per mile.

Q. And he included pay of trainmen, valve oil, light, heat, without anything else?

A. Without prolonging this, I would be willing to admit

that the Commission thought his figures were somewhat too low.

Q. Do you know what it costs—you did not have any statement of cost other than the Railroad Company's statement?

A. And the statement of Mr. Smith and Mr. Moore.

Q. Did not Mr. Moore say that that was the first statement he had ever before made?

A. I think the record will show that.

Q. Is that a fact?

A. I think he said that.

Q. Did you then have any statement other than the railroad's?

A. We had these two gentlemen before us and we had our own common knowledge. I have not had a great deal of experience in these matters, but I have been on the Commission a little more than four years, and have had various railroad reports before me.

Q. Were you in the railroad business before?

A. I was not.

Q. You think the Mobile & Ohio Railroad Company ought to run one train—did I understand you to say that one train would pay?

A. I said that I thought one train between Waynesboro and Okolona, one additional train, would pay a revenue of more than forty cents per train mile.

Q. You joined in the order of putting on all of the trains, did you not? Did you think then that all of them would pay?

A. The reports showed to us that there was no months, as I have stated before this court, that there was no month that all of the trains paid less than forty cents per train mile. There were certain days——

Q. Your decision was based on the fact that the reports to you showed that they earned more than forty cents, and therefore, you said they paid?

A. That was the Railroad Company's statement of the direct charge, and the other people who testified before us claimed it to be twenty-six cents. We had a latitude of fourteen cents.

Q. Do you know what the L. & N.'s charge is, what they show?

A. I do not.

Q. Do you know what any of the roads who separate this expense show?

A. I know what the general claim what the average cost of passenger trains is. About a dollar per mile.

Q. Why should you not consider that the cost?

A. I mean that that was considered the cost by certain railroad people. I did not say that I considered it.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

MOBILE & OHIO RAILROAD COMPANY

v. In Equity.

THE MISSISSIPPI RAILROAD COMMISSION and Ross A. Collins, Attorney General.

In the above entitled cause application having been heretofore made and presented to the Honorable H. C. Niles, United States District Judge, for the issuance of a preliminary injunction as prayed for in the bill in said cause, and the said Honorable H. C. Niles having heretofore called to his assistance Honorable Don A. Pardee and Richard Walker, United States Circuit Judges, to hear and to determine the said application, and the said application having been set down for hearing at New Orleans on the 27th day of October, 1914, and due notice thereof having been given to the parties in said cause, the said application came on for hearing and determination at the time and place stated in such notice, and, after considering the pleadings in the case and the evidence offered on said hearing by the parties to the cause;

IT IS ORDERED, adjudged and decreed that a preliminary injunction issue as prayed for in said bill.

DON A. PARDEE,
Circuit Judge.

R. W. WALKER,
U. S. Circuit Judge.

H. C. NILES,
U. S. District Judge.

Following appears on back:

No. 21. M. & O. R. R. Co., vs. Miss. R. R. Com. Decree. Filed, Dec. 28, 1914. L. B. Moseley, Clerk. EOB 1 p. 59.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

MOBILE & OHIO RAILROAD COMPANY

v.

MISSISSIPPI RAILROAD COMMISSION, et als.

The President of the United States to the Mississippi Railroad Commission, F. M. Sheppard, President, and member of said Commission, Geo. R. Edwards and W. B. Wilson, members of said Commission, and Ross R. Collins, Attorney General of the State of Mississippi, and their Agents and Attorneys, Greetings:

WHEREAS, in the above entitled cause the Judges of the said Court, the Honorable Don A. Pardee, Circuit Judge, the Honorable R. W. Walker, Circuit Judge, and the Honorable H. C. Niles, District Judge, after due hearing, in accordance with the law, made and entered an order on the.....day of December, 1914, directing that a preliminary injunction issue in said cause, as prayed in the bill of complaint filed therein:

Now, therefore, you, the said the Mississippi Railroad Commission, and F. M. Sheppard, President, and Member of the said Railroad Commission, and Geo. R. Edwards, and W. B. Wilson, members of the said Commission, and Ross A. Collins, Attorney General of the State of Mississippi, your Agents and Attorneys, are strictly commanded and enjoined, under the pains and penalties which may befall upon you, and each of you, in case of disobedience, that you forthwith, and until the further order, judgment and decree of this Court, desist and abstain from enforcing, or taking any steps to enforce compliance by the Mobile & Ohio Railroad Company, the complainant, with all or any of those six orders issued by the said Mississippi Railroad Commission on the 7th day of October, 1914, directing complainant, the Mobile & Ohio Railroad Company to operate on its line of road within the State of Mississippi certain passenger trains, numbered 7, 8, 9, 10, 11 and 12, respectively; and from taking any steps to collect from complainant, the Mobile & Ohio R. R. Co., any of the penalties provided in said orders, or by any law of the State of Mississippi, for disobedience of said orders.

Witness the Honorable Edward Douglass White, Chief Justice of the United States, this the 30th day of December, 1914.

L. B. MOSELEY, Clerk.

Following appears on back:

No. 21. M. & O. R. R. Co., vs. Miss. R. R. Com., et als. Preliminary Injunction. Serve on Miss. R. R. Com., F. M. Sheppard, Geo. R. Edwards, W. B. Wilson, Ross A. Collins. Jan. 26th, 1915. L. B. Moseley, Clerk. Carl Fox, S. R. Prince, Attorneys, Mobile.

Received the within named writ at Richton, Miss., by mail on Jan. 3rd, 1915, and executed same by handing a true copy to F. M. Sheppard, President of Mississippi R. R. Commission same day at his home in Richton, Miss.

JNO. G. CASHMAN,
U. S. Marshal.
By J. D. MONEY, Deputy.

Executed in person at Jackson, Miss., by delivering a copy of this order to James Galceran for R. R. Commissioners and Ross A. Collins. Done this Jan. 1st, 1915.

JNO. G. CASHMAN,
U. S. Marshal.
By C. B. FRENY, Deputy.

Executed by handing a true copy of this writ to Geo. Edwards and W. B. Wilson at Jackson, Miss., this the 5th day of Jan., 1915.

(Seal).

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.
AT JACKSON, MISSISSIPPI.

MOBILE & OHIO RAILROAD COMPANY
v. In Equity.
MISSISSIPPI RAILROAD COMMISSION, et als.

PETITION FOR APPEAL TO THE SUPREME COURT OF THE UNITED STATES.

The defendants, Mississippi Railroad Commission, Geo. R. Edwards, F. M. Sheppard and W. B. Wilson, members

thereof, James Galceran, Secretary thereof, and Ross A. Collins, Attorney General of the State of Mississippi, conceiving themselves aggrieved by the decree granting a temporary restraining injunction restraining the said defendants from enforcing order passed by the Mississippi Railroad Commission requiring the Mobile & Ohio Railroad Company to operate trains No. 7, 8, 9, 10, 11, and 12, between Waynesboro, Mississippi and Okolona Mississippi do hereby pray an appeal from said decree of the United States District Court of the Southern District of Mississippi to the Supreme Court of the United States at the present term thereof for the reason specified in the assignment of errors which is filed herewith, praying that this appeal may be allowed and that transcript of all proceedings and papers in this case duly authenticated may be sent to the Supreme Court of the United States.

MISSISSIPPI RAILROAD COMMISSION,
GEORGE R. EDWARDS,
F. M. SHEPPARD,
W. B. WILSON,
Members Thereof.
JAMES GALCERAN,
Secretary.
ROSS A. COLLINS,
Attorney General.
By GEO. H. ETHRIDGE,
Asst. Attorney General.

This 9th day of Jan., 1915.

The foregoing prayer for an appeal is granted and allowed this the 11th day of January, 1915, upon defendants executing an appeal bond in the sum of One Thousand ($1,000.00) Dollars conditioned according to law.

H. C. NILES,
United States District Judge for the Southern District of Mississippi.

Following appears on back:

No. 21. M. & O. R. R. Co., vs. Miss. R. R. Com. Petition for Appeal. Filed Jan. 14, 1915. L. B. Moseley, Clerk.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.
AT JACKSON, MISSISSIPPI.

MOBILE & OHIO RAILROAD COMPANY
v. In Equity.
MISSISSIPPI RAILROAD COMMISSION, et als.

ASSIGNMENT OF ERRORS.

The defendants, Mississippi Railroad Commission, Geo. R. Edwards, F. M. Sheppard, and W. B. Wilson, members thereof, James Galceran, Secretary, and Ross A. Collins Attorney General of the State of Mississippi, having prayed an appeal from the preliminary decree granting a preliminary injunction and restraining order in the above cause enjoining the defendants herein from enforcing an order of the said Mississippi Railroad Commission in the above styled cause, now assigns for error in the decree of the District Court as follows, to-wit:

1st. That the Court erred in granting an injunction on the preliminary hearing as prayed for in the bill of complaint;

2nd. The Court erred in granting any relief to the Complainant.

3rd. The Court erred in not denying the application for injunction and dismissing the bill of complaint.

WHEREFORE, the defendants pray that the decree of the said District Court be reversed and the bill of complaint filed herein be dismissed at the cost of the complainant, the appellee herein.

MISSISSIPPI RAILROAD COMMISSION,
GEO. R. EDWARDS,
F. M. SHEPPARD,
W. B. WILSON,
Members Thereof.
JAMES GALCERAN,
Secretary.
ROSS A. COLLINS,
Attorney General.
By GEO. H. ETHRIDGE,
Asst. Attorney General.

Following appears on back:

No. 21. M. & O. R. R. Co., vs. Miss. R. R. Com. Assignment Error. Jan. 14, 1915, L. B. Moseley, Clerk.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, AT JACKSON, MISSISSIPPI.

MOBILE & OHIO RAILROAD COMPANY

v. In Equity.

MISSISSIPPI RAILROAD COMMISSION, et als.

APPEAL BOND.

Know All Men By These Presents, That we, The Mississippi Railroad Commission, Geo. R. Edwards, F. M. Sheppard and W. B. Wilson, members thereof, and James Galceran, Secretary, and Ross A. Collins, Attorney General of the State of Mississippi, Principals, and the American Surety Co., of New York, as surety, are held and firmly bound unto the Mobile & Ohio Railroad Company in the sum of One Thousand Dollars ($1.000.00) to be paid to the said Complainant, their Attorneys, successors, executors, administrators or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, and successors jointly and severally by these presents. Sealed with our seals and dated this 28th day of January, 1915.

Whereas, lately at a District Court of the United States for the Southern District of Mississippi, in a suit pending in said Court between the above named parties, a preliminary decree was rendered enjoining and restraining the Mississippi Railroad Commission, Geo. R. Edwards, F. M. Sheppard and W. B. Wilson, members thereof, and James Galceran, Secretary, and Ross A. Collins, Attorney General of the State of Mississippi, from enforcing or taking any steps to enforce the said order of the Railroad Commission; and whereas an appeal has been taken from said decree to the Supreme Court of the United States on condition that the defendants pay all costs which may be adjudged against them on this appeal in the case of affirmance of the said judgment on said appeal; and

Whereas, citation was directed to the above named complainant, citing and admonishing it to be and appear at a session of the Supreme Court of the United States to be held at the City of Washington, District of Columbia, within thirty days from this date;

Now, therefore, the condition of the above obligation is such that if the said Mississippi Railroad Commission, George R. Edwards, F. M. Sheppard and W. B. Wilson, members thereof, and James Galceran, Secretary, and Ross A. Collins, Attorney General of the State of Mississippi, shall prosecute this appeal with effect, and pay all damages and costs which ultimately may be awarded against them, if they fail in said appeal, then the above obligation is to be void.

Signed, sealed and delivered this the.....day of Jan., 1915.

MISSISSIPPI RAILROAD COMMISSION,
GEORGE R. EDWARDS,
F. M. SHEPPARD,
W. B. WILSON,
Members Thereof.

JAMES R. GALCERAN,
Secretary.

ROSS A. COLLINS,
Attorney General.

By GEO. H. ETHRIDGE,
Asst. Attorney General.
Principals.

AMERICAN SURETY CO.,
By P. L. CLIFTON,
Resident Vice Pres. Surety.

Attest:

L. B. MOSELEY,
Resident Asst. Secretary.

The foregoing Bond is approved this the.....day of
(Seal). January, 1915.

.....

Judge of the United States District Court for the Southern District of Mississippi.

Following appears on back:

No. 21. M. & O. R. R. Co., vs. Miss. R. R. Com. Appeal Bond. Filed Feb. 10, 1915. L. B. Moseley, Clerk.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.
AT JACKSON, MISSISSIPPI.

MOBILE & OHIO RAILROAD COMPANY
v. In Equity.
MISSISSIPPI RAILROAD COMMISSION, et als.
THE UNITED STATES OF AMERICA: ss.

The President of the United States to the Mobile & Ohio Railroad Company, Greetings:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at the City of Washington, District of Columbia, within thirty days from the date of this writ pursuant to an appeal duly allowed by the District Court for the Southern District of Mississippi, at Jackson, Mississippi, and filed in the Clerk's office of said Court on the .....day of January, 1915, in the above entitled cause, wherein the Mississippi Railroad Commission, Geo. R. Edwards, F. M. Sheppard and W. B. Wilson, members thereof and James Galceran, Secretary, and Ross A. Collins, Attorney General of the State of Mississippi are appellants, and the Mobile & Ohio Railroad Company, appellee, to show cause, if any, why the decree should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward Douglas White, Chief Justice of the Supreme Court of the United States, this 11th day of January, 1915.

H. C. NILES,
Judge of the District Court of the United States for the Southern District of Mississippi.

Service of a copy of the within citation is hereby admitted this the 18th day of January, 1915.

S. R. PRINCE,
Solicitor for Complainant.

Following appears on back:

No. 21. M. & O. R. R. Co., vs. Miss. R. R. Com. Citation and Acceptance. Filed, February 10, 1915. L. B. Moseley, Clerk.

IN THE UNITED STATES DISTRICT COURT FOR THE THE SOUTHERN DISTRICT OF MISSISSIPPI, AT JACKSON.

MOBILE & OHIO RAILROAD COMPANY

vs. No. 21.

MISSISSIPPI R. R. COMMISSION.

PETITION FOR AN EXTENSION OF TIME IN WHICH TO PERFECT AND PROSECUTE AN APPEAL.

To the Honorable H. C. Niles, Judge of the District Court of the United States for the Southern District of Mississippi:

Your petitioner, Ross A. Collins, Attorney General of the State of Mississippi, attorney for the Mississippi Railroad Commission respectfully shows unto your Honor that it is necessary for him to have an extension of time in which to prepare and perfect an appeal in this case and shows as a reason therefor that his office has been very busy with accumulated business and that the record in this case will have to be condensed under the rules of the Supreme Court, and that on account of official business, he has not had time to do the work required in condensing said record and having the record prepared for printing and that the time will be up for having said record on the 11th day of February unless an extension is granted.

Petitioner shows further that the granting of said extended time will not affect the rights of appellee in said cause as the order granting the injunction prevents the Railroad Commission from taking any action until after the said appeal shall have been disposed of. He files herewith an agreement signed by Hon. S. R. Prince, General Attorney for the Mobile & Ohio R. R. Co., appellee, in which he agrees that an extension of thirty (30) days may be allowed and that it will not affect the rights of the Appellee.

Wherefore, your petitioner prays that your Honor will grant an order extending said time for thirty (30) days from and after the eleventh day of February, 1915.

ROSS A. COLLINS, Attorney General.

By GEO. H. ETHRIDGE,

Asst. Attorney General.

Mobile, Ala., February 3rd, 1915.

Mr. Geo. H. Ethridge,
Assistant Attorney General,
Jackson, Mississippi.

Dear Sir:

I advise you that it is entirely satisfactory to the defendant Mobile & Ohio R. R. Co., for you to secure from the Federal Court additional time within which to prepare the record in the case of Railroad Commission of Mississippi, et al. v. Mobile & Ohio R. R. Co. The interest of the Mobile & Ohio R. R. Co. will not be prejudiced by the delay.

I understand that you desired thirty days additional time.

Yours truly,

S. R. PRINCE,
General Counsel.

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, AT JACKSON, MISSISSIPPI.

MOBILE & OHIO RAILROAD COMPANY
v.
MISSISSIPPI RAILROAD COMMISSION. In Equity.

ORDER EXTENDING TIME TO PERFECT APPEAL.

The application of Ross A. Collins, Attorney General of the State of Mississippi, Attorney for the Appellant in the above styled cause coming on for hearing before the undersigned, the said petition being accompanied with agreement signed by the Attorney for the Appellee that the allowing of said extension would not injuriously affect the rights of the Appellee, and it appearing further to the Court that it is necessary to grant said extension, it is therefore ordered and adjudged that said petition be allowed and that the Appellant be allowed thirty (30) days from and after the (11th) eleventh day of February, 1915, in which to perfect the said appeal.

Ordered, this the 6th day of February, 1915.

H. C. NILES,
U. S. Dist. Judge for the So. Dist. of Miss.

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

MOBILE & OHIO RAILROAD COMPANY
v.
MISSISSIPPI RAILROAD COMMISSION
and Ross A. Collins, Attorney General.

PETITION FOR AN EXTENSION OF THE TIME IN WHICH TO PERFECT AN APPEAL.

To the Honorable H. C. Niles, United States District Judge of the Southern District of Mississippi.

Your petitioner, Ross A. Collins, Attorney General, by Geo. H. Ethridge, Assistant Attorney General, representing the defendants in the above styled cause, respectfully shows unto your Honor that additional time is necessary in which to prepare the record and perfect the appeal in the above styled cause and that no injury will result to the complainant by granting said extension of time but shows, on the contrary, that the complainant is willing for the said time to be extended and shows as a reason for said extension that the record has to be condensed under the rules of the Supreme Court and that the Attorney General and his Assistants have had a large number of causes pending in the different Courts and that it has been impossible to perfect the record within the time heretofore allowed and discharge the duties imposed by law upon the Attorney General's office.

Wherefore, defendants move that the Court grant additional time of thirty days from and after the 11th day of March, 1915, in which to perfect said appeal and that the Court retain jurisdiction until said record has been perfected.

MISSISSIPPI RAILROAD COMMISSION,
ROSS A. COLLINS,
Attorney General.
By GEO. H. ETHRIDGE,
Asst. Attorney General.

Following appears on back:

No. 23. M. & O. R. R. Co. vs. Duncan L. Thompson, et al. Petition.

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

MOBILE & OHIO RAILROAD COMPANY
v.
MISSISSIPPI RAILROAD COMMISSION,
and Ross A. Collins, Attorney General.

ORDER.

This cause coming on for hearing before the undersigned District Judge of the United States for the Southern District of Mississippi on petition for an extension of time in which to perfect the appeal in this cause, and it appearing to the satisfaction of the Court that additional time is necessary and that no injury will result to the complainant by allowing said extension of time, and it appearing further to the Court upon letter submitted with the application that the Attorney for the Mobile & Ohio Railroad Company has agreed that such extension will not harm the interests of the complainant, the said motion is hereby granted and thirty (30) days additional time to that heretofore allowed will be and is hereby allowed the Railroad Commission and the Attorney General in which to perfect said appeal as required by law.

Ordered, this the 10th day of March, 1915.

H. C. NILES,
Judge of U. S. Dist. Court for the So. Dist of Miss.

Following appears on back:

No. 23. M. & O. R. R. Co., vs. D. L. Thompson, Auditor, et. als. Order Extending Time. Filed March 14, 1915, L. B. Moseley, Clerk. OB. p. 63.

MISSISSIPPI RAILROAD COMMISSION, et als., Appellants,
vs. No. 21.
MOBILE & OHIO RAILROAD COMPANY, Appellees.

PRAECIPE.

To the Clerk of the United States District Court for the Southern District of Mississippi, at Jackson, Mississippi:

You are hereby instructed and directed, in making up the record for appeal in the above styled cause wherein the Mis-

sissippi Railroad Commission and Ross A. Collins, Attorney General, have prayed an appeal to the Supreme Court of the United States from a judgment awarding the preliminary injunction granted by Judge Pardee, Walker and Niles, granting an injunction against the Railroad Commission and the Attorney General of Mississippi from enforcing certain orders of the Railroad Commission involved in said suit, to insert:

1st. The bill of complaint by the complainant;

2nd. The application for a preliminary injunction together with the preliminary restraining order issued thereon;

3rd. Notice of hearing served on the defendants with the Marshal's return endorsed thereon;

4th. The answer of the defendants to the bill of complaint.

5th. The affidavit of R. V. Taylor signed before Richard Pratt, Notary Public, on the 24th day of October, 1914;

6th. Cross-examination of R. V. Taylor on said affidavit as condensed by the appellees;

7th. The affidavit of W. W. Middleton with exhibits thereto on said hearing;

8th. Cross-examination of W. W. Middleton on said affidavit before the Court as condensed by the appellees;

9th. Affidavit of G. A. Cook;

10th. The affidavit of C. A. Pigford;

11th. The affidavit of G. H. Fordham;

12th. Then insert complainant's offered affidavits which were in the same language as the affidavits of Fordham from the following parties offered by the complainant.

J. W. Wilson, in the lumber business at Quitman; had resided there one year.

F. R. Crandall, in the lumber business at Quitman; had resided there five years.

T. A. Bolster, in the general merchandise business at Quitman; had resided there seven years.

J. K. Kirkland, in the general mercantile business at Quitman; had resided there thirty years.

J. A. Terral, in the banking business at Quitman; had resided there ten years.

Jno. S. Dabbs, in the livery business at Quitman; had resided there for forty-eight years.

Jeff M. Carter, in the mercantile business at Quitman; had resided there fifteen years.

Ben H. Carter, in the mercantile business at Quitman; had resided there ten years.

M. E. Lott, in the drug business at Quitman; had resided there twenty years.

J. P. Adams, in the mercantile business and mayor of Quitman; had resided there fifteen years.

B. H. Donald, in the drug business at Quitman; had resided there thirty years.

F. H. Deas, in the real estate business at Enterprise; had resided there thirty years.

M. W. Buckley, in the mercantile business at Enterprise; had resided there forty years.

C. C. Hand, in the mercantile business at Enterprise; had resided there fifty years.

C. T. Bonner, in the mercantile business at Enterprise; had resided there twenty years.

W. E. Bass, in the mercantile business at Enterprise; had resided there twenty years.

W. Robeson Smith, in the drug business at Enterprise; had resided there seven years.

J. M. Buckley, in the mercantile business at Enterprise; had resided there twenty-four years.

W. G. Edwards, postmaster at Enterprise; had resided there twenty-one years.

G. R. Olliphant, Jr., in the lumber business at Enterprise; had resided there thirty-six years.

S. H. Andrews, in the mercantile business at Enterprise; had resided there forty years.

R. J. Barbour, in the mercantile business at Enterprise; had resided there five years.

J. E. Stovall, in the newspaper business at Shubuta; had resided there thirty-seven years.

J. W. Whitehead, in the jewelry business at Shubuta; had resided there eighteen years.

John N. Patton, in the general mercantile business at Shubuta; had resided there twenty years.

R. M. Hand, physician and surgeon at Shubuta; had resided there thirty-nine years.

H. E. Flournoy, in the mercantile business at Shubuta; had resided there forty years.

R. P. Jones, in the contracting business at Shubuta; had resided there fifteen years.

T. F. Hudzen, in the drug business at Shubuta; had resided there twenty-four years.

William M. Smith, in the mercantile business at Shubuta; had resided there for twenty-five years.

T. R. Gates, in the mercantile business at Shubuta; had resided there forty years.

F. P. Ellis, in the general mercantile business at Shubuta; had resided there eight years.

W. H. Patton, in the general mercantile business at Shubuta; had resided there fifty-five years.

J. N. Brownlee, in the lumber manufacturing business at Shubuta; had resided there for ten years.

J. E. Rainwater, in the general mercantile business at Shubuta; had resided there for twenty-five years.

J. M. Nettles, in the mercantile business at Shubuta; had resided there twenty years.

T. L. Wainwright, in the cotton manufacturing business at Stonewall; had resided there forty-two years.

J. S. Gray, in the lumber manufacturing business at West King; had resided there five years.

J. A. Leggett, cashier of the Peoples Bank at Waynesboro; had resided there three years.

O. O. Lomax, M. D., physician and surgeon at Waynesboro; had resided there sixteen years.

T. O. Slaughter, in the drug business at Waynesboro; had resided there fourteen years.

J. W. Alexander, editor and publisher, Waynesboro; had resided there twenty-three years.

J. C. Rush, M. D., physician at Waynesboro; had resided there sixteen years.

H. B. Cole, in the manufacturing business at Waynesboro; had resided there thirty-three years.

W. M. McAllister, attorney at law (county attorney), at Waynesboro; had resided there twenty years.

C. I. Hendrix, in the mercantile business at Waynesboro; had resided there twenty years.

J. B. Saxon, attorney at law, Waynesboro; had resided there four years.

J. T. Hairston, in the livery business at Waynesboro; had resided there six years.

C. L. Daniel, in the mercantile business at Waynesboro; had resided there twelve years.

J. A. Smith, in the mercantile business at Waynesboro; had resided there seventeen years.

Gandy Bros., in the mercantile business at Waynesboro; had resided there nine years.

J. M. Smith, in the real estate business at Waynesboro; had resided there seven years.

W. P. Gray, physician at Waynesboro; had resided there thirty-five years.

W. B. McMorries, in the banking business at Waynesboro; had resided there six years.

J. F. Pou, Sr., physician, surgeon, and farmer, at Waynesboro; had resided there eight years.

J. T. Pinkerton, in the live stock business at Waynesboro; resided there eight years.

W. E. Lathram, in the mercantile business at Waynesboro; had resided there sixteen years.

R. O. Peel, in the general merchandise business at Waynesboro; had resided there twenty-two years.

T. J. Browning, druggist at Waynesboro had resided there twelve years.

Truman Gray, farmer and post master at Waynesboro; had resided there sixty years.

J. R. Huggins, manufacturer and general merchandise business at Waynesboro; had resided there fifty-three years.

W. H. Fields, in the lumber business at Hiwanee; had resided there two years.

Geo. D. Weems, in the general merchandise business at Shubuta; had resided there thirty years.

Oscar P. Phillips, in the general merchandise business at Shubuta; had resided there thirty years.

13th. Affidavit of C. I. Weems.

14th. The Clerk will set out the affidavits and depositions offered by the defendant and the appellant as condensed by the appellees, as follows:

R. B. Mimms, R. W. McKinley, J. H. Wright, J. V. Ulmer, J. D. Waddell, T. G. Fewell, Sam Howard, M. J. Feiler, Cliff Williams, Clyde Soule, Lee Wellhouse, E. D. Self, Jasper Boykin, H. F. Broach, W. D. Hawkins, A. W. Kaye, T. A. Thorn, Edgar Feibleman, A. B. Patterson, W. E. Hopper, R. D. Smith, M. C. Moore.

15th. Affidavit of Dr. F. M. Sheppard:

16th. Insert the order of the three judges granting the preliminary injunction.

17th. The Clerk will next insert petition for appeal with Assignment of Errors, decree allowing appeal and appeal bond in the order named.

18th. The clerk will insert the waiver or admitting of service of citation of appeal by the appellees.

19th. The petition for additional time in which to perfect appeal with the order of the Court and agreement thereon.

20th. The second petition for extension of time with agreement and order thereon.

21st. This praecipe is directed to be copied into the record.

22nd. Index to the record.

This the 27th day of March, 1915.

H. C. NILES,

Judge of the U. S. Dist. Court for the So. Dist. of Miss.

Following appears on back:

No. 21. M. & O. R. R. Co., vs. Miss. R. R. Com. Praecipe. Filed March 25th, 1915. L. B. Moseley, Clerk.

MISSISSIPPI RAILROAD COMMISSION, et al., Appellants,
vs. No.....
MOBILE & OHIO RAILROAD COMPANY, Appellees.

Comes Appellee, Mobile & Ohio Railroad Company, and presents this its motion to the Court, and shows:

That in the preparation of the record in the appeal of this said cause a full understanding of the cross-examination of witnesses R. D. Smith and M. C. Moore, and a full understanding of the testimony of witness F. M. Sheppard, all being witnesses for the appellant, cannot be had without a reproduction of said testimony in the exact words of the said witnesses.

Therefore, Appellee prays the Court to grant this motion and direct that said testimony be set forth in the said record.

This the 25th day of March, 1915.

S. R. PRINCE,
Attorney for Appellee.

Following appears on back:

No. 21. M. & O. R. R. Co., vs. Miss. R. R. Com. Motion. Filed March 30th, 1915. L. B. Moseley, Clerk.

MISSISSIPPI RAILROAD COMMISSION, et al., Appellants,
vs. No.....
MOBILE & OHIO RAILROAD COMPANY, Appellees.

On motion of Appellee made to the Court, and on request of Appellee, the Court, being satisfied that such request is reasonable, directs that the cross-examination of R. D. Smith and M. C. Moore, and the entire testimony of F. M. Sheppard, witness for the Appellant, be reproduced in the record in the exact words of the witnesses.

This the 27th day of March, 1915.

H. C. NILES,
Judge of U. S. Dist. Court for the So. Dist of Miss.

Following appears on back:

No. 21. M. & O. R. R. Co., vs. Miss. R. R. Com. Order. Filed March 30th, 1915. L. B. Moseley, Clerk. EOB 1 p. 64.

UNITED STATES OF AMERICA,
SOUTHERN DISTRICT OF MISSISSIPPI.

I, L. B. Moseley, clerk of the District Court of the United States for the Southern District of Mississippi, do hereby certify that the foregoing 149 pages contain a true and correct copy of the record in the case of Mobile & Ohio R. R. Co., vs. the Mississippi R. R. Commission, et. al., as the same appears of record in my office at Jackson, Mississippi.

Witness my hand and the seal of said court hereto affixed at Jackson, Miss., in said District, this the 10 day of apr 1915.

L B Moseley Clerk.

Office Supreme Court, U. S.
FILED
OCT 4 1915
JAMES D. MAHER
CLERK

No. 6[redacted]256

IN THE

Supreme Court of the United States

OCTOBER TERM, 1915.

MISSISSIPPI RAILROAD COMMISSION AND

ROSS A. COLLINS, ATTORNEY GENERAL

OF MISSISSIPPI

vs.

MOBILE & OHIO RAILROAD COMPANY.

BRIEF OF GEORGE H. ETHRIDGE, ASSISTANT ATTORNEY GENERAL

PRINTED BY HEDERMAN BROS., JACKSON, MISS.

INDEX

	Pages
Statement of Case	1 to 5
Effect of Findings of Railroad Commission, Sec. 4836 Code	5
Code of Mississippi 1906, Sec. 4833	6
Notice Before Commission; How Served	6 and 7
Railroad Commission Not a Judicial Body	7
Mississippi Constitution, Sec. 181	7
Railroads Common Carriers and Public Highways	8
Carriers; Supervision of Passenger Cars Sufficient to be Provided	11
Schedules and Tariffs to be Provided; Notice and Hearing	10
Schedules Must be Tried Out	27

LIST OF CASES CITED.

	Page
Atlantic Coast Line R. R. Co. vs. Fla., 203 U. S., 261; 51 L. Ed. 175	24
Atlantic Coast Line R. R. Co. vs. N. C., 206 U. S. 1; 51 L. Ed., 933	22
A. G. S. R. R. Co. vs. R. R. Commission, 64 So. 13	30
A. & V. R. R. Co. vs. Commission, 38 So. 356	9
Brand vs. Wilmington, 77 N. C., 347; Charlotte C. & A. R. R. Co. vs. Gibbes, 142 U. S. 386	24
Chicago M. & St. P. R. R. Co. vs. Thompson, 176 U. S. 167	27
Chicago M. & St. P. R. R. Co. vs. Minn., 134 U. S. 418, 33 L. Ed. 970	27
Chicago M. & St. P. R. R. Co. vs. Ackley, 94 U. S. 179, 24 L. Ed. 99	24
Chicago & G. T. R. R. Co. vs. Wellman, 143 U. S. 339, L. Ed. 176	24
Chicago B. & A. R. R. Co. vs. Ill., 200 U. S. 561, 50 L. Ed. 596	25
Chicago, Etc., R. Co. vs. People, 152 Ill., 230	25

INDEX

City of Gainesville vs. Gainesville Gas & Electric Power Co., 62 So. 919 25
Chicago B. & A. R. R. Co. vs. Iowa, 94 U. S. 155, 24 L. Ed. 94 23
Dow vs. Beidelman, 125 U. S. 680 24
Gadsden vs. Minn., 166 U. S. 427 27
Georgia Ry. & Banking Co. vs. Smith, 128 U. S. 174, 32 L. Ed. 377 27
Gas Light Co. vs. Zanesville, 47 Ohio St. Rep. 35 25
Farmers Loan & Trust Co. vs. Heming, Fed. Cos. No. 4666 25
Kavanaugh Co. vs. So. Ry. Co., 1 Ann. Cases, 705 25
Lake Shore & Michigan Southern R. Co. vs. Ohio, 173 U. S. 285 15
Loraine vs. Pittsburg Elec. R. Co., 205 Pa. 32 26
Louisville & Nash. R. Co. vs. Ky., 161 U. S. 677 ... 24
Minneapolis & St. L. R. Co. vs. Minn., 186 U. S. 257, 46 L. Ed. 1151 .....
Minneapolis & St. L. R. Co. vs. Minn., 193 U. S. 53 24
North Carolina Corp. Com. vs. Atlantic Coast Line R. Co., 137 N. C. 1 25
Ohio & M. Ry. Co. vs. People, 120 Ill. 200 25
Pearsall vs. Great Northern R. Co., 161 U. S. 646 24
Perk. vs. Chi. & N. W. R. Co., 94 U. S. 164 23
People vs. Chicago, Etc., R. Co., 223 Ill. 581 23
People vs. St. L. Elec. R. Co., 35 L. R. A. 656 25
People vs. Albany & V. R. Co., 24 N. Y. 261 25
Pensacola & A. R. Co. vs. State, 25 Fla. 310 25
Reagan vs. Farmers L. & T. Co., 154 U. S. 362 25
Ruggles vs. Illinois, 108 U. S. 536 24
Railroad Commission vs. Portland, Etc., R. Co., 63 Me. 269 26
State ex rel vs. Atl. C. L. Ry. Co., 53 Fla. 650 25
State ex rel. v. Mo., etc., R. Co., 55 Kan. 708 25
San Antonio St. R. Co. vs. State, 90 Tex. 520 26
State ex rel vs. Tampa Water W. Co., 57 Fla. 533 .. 25
State vs. Mo., etc., Ry. Co., 55 Kan. 708 25
Seaboard Air Line R. Co. vs. Fla., 203 U. S. 261 .. 24

INDEX

Stone vs. Y. & M. V. R. Co., 62 M. 607..... 9
Stone vs. Natchez Elec. R. Co., 62 Miss. 646..... 9
Stone vs. Farmers L. & T. Co., 116 U. S. 307.. 13 and 24
Stone vs. I. S. R. Co., 116 U. S. 347..... 24
Stone vs. N. O. & N. E. R. Co., 116 U. S. 352..... 24
Stone vs. Wisconsin, 94 U. S. 181..... 24
St. Louis & S. F. R. Co. vs. Gill..... 25
Smith vs. Ames, 169 U. S. 466..... 25
United States vs. Trans. Mo. F. Asso., 166 U. S. 290 26
Winona & St. P. R. Co. vs. Blake, 94 U. S. 180.... 24
Wisconsin M. & P. R. Co. vs. Jacobson, 179 U. S. 287 ..... 21 and 24

ASSIGNMENT OF ERRORS.

The following errors are assigned:

First, That the Court erred in granting an injunction on the preliminary hearing as prayed for in the bill of complaint.

Second, The Court erred in granting any relief to the Complainant.

not

Third, The Court erred in denying the application for injunction and dismissing the bill of complaint.

And (see Record, page 136).

IN THE

Supreme Court of the United States

OCTOBER TERM, 1915.

MISSISSIPPI RAILROAD COMMISSION AND
ROSS A. COLLINS, ATTORNEY GENERAL
OF MISSISSIPPI

vs.

MOBILE & OHIO RAILROAD COMPANY.

BRIEF OF GEORGE H. ETHRIDGE, ASSISTANT ATTORNEY GENERAL

This is an appeal from an order of the District Court for the Southern District of Mississippi, allowing an injunction against the Mississippi Railroad Commission and the Attorney General of the State of Mississippi, restraining them from enforcing an order made by the Mississippi Railroad Commission requiring the Mobile & Ohio Railroad Company to operate passenger trains Nos. 7, 8, 9, 10, 11, 12, in the State of Mississippi between the points of Waynesboro, Mississippi, and Okolona, Mississippi.

The application for injunction was heard by Judges

Pardee and Walker, Circuit Judges of the United States, and Judge Niles, District Judge of the Southern District of Mississippi.

Prior to the time of making the order by the Mississippi Railroad Commission, the appellee had operated said trains between Mobile, Alabama, and Meridian, Mississippi, and between Okolona, Mississippi, and Meridian, Mississippi, and between Meridian, Mississippi, and Union City, Tennessee.

STATEMENT OF THE CASE.

The orders of the Mississippi Railroad Commission resulted from the act of the complainant in taking off the above mentioned trains which had been regularly operated over the lines of the complainant in the State of Mississippi, some of the said trains prior to the taking off running also from the Mississippi State line to the city of Mobile, Alabama. Prior to the action of the complainant in taking off said trains, it operated two trains daily each way, both North and South, over its lines from Mobile, Alabama, to St. Louis, Missouri, passing through the State of Mississippi, over the lines of the complainant, and serving principally interstate commerce, but also serving as a train of local or intrastate commerce between certain points in Mississippi on the line of the complainant. It also operated one train per day each way, North and South from Meridian, Mississippi, to Union City, Tennessee, and also one train daily, North and South, from Meridian, Mississippi, to Okolona, Mississippi. It also operated two trains daily each way, both North and South, between Meridian, Mississippi, and Mobile, Alabama. The trains proposed to be taken off, or which were taken off, and which have been required to be operated within Mississippi by the orders of the Commission

were placed in service, the first one in 1909, between Mobile, Alabama, and Meridian, Mississippi, and thereafter another train running between the same points but making a different schedule, was placed in service in 1911, and the train between Meridian and Okolona, Mississippi, placed in service in 1913. Prior to the installing of the additional passenger service in 1909, the complainant operated on some of its local freights a local passenger service having a car fitted up for passengers attached to the rear of its freight trains. This service was discontinued and the first passenger train installed between Meridian, Mississippi, and Mobile, Alabama, was installed for the purpose of taking care of travel which was inconvenienced by the taking off of the local freight passenger service.

The City of Meridian is one of the most important traffic centers and centers of population upon the line of the Mobile & Ohio Railroad Company between Mobile, Alabama, and St. Louis, Missouri, it furnishing revenue to the complainant second only to St. Louis, Missouri. Within the past few years, the traffic conditions of the territory contiguous to Meridian, Mississippi, have been largely diverted from wagon and vehicle traffic to traffic over railroads. In other words, owing to conditions and schedules, the people have begun to ship their freight and merchandise of all kinds from Meridian to the smaller towns and villages by rail and they would go from country points to these local stations which were much nearer to residences of the citizens generally than was Meridian, Mississippi. Whenever people desired to do shopping and smaller retailing trade at Meridian, they would purchase tickets and travel over the railroads, the schedules being so adapted that from nearly all points people could go from their homes or from their neighboring towns and villages to Meridian, Mississippi, and return entirely by daylight trains. This condition had arisen partially also from the fact that other railroads had been built within

territory contiguous to Meridian, Mississippi, that had made it a matter of convenience to travel by rail rather than by dirt road. Conditions had so adjusted themselves that taking off the facilities proposed, to the extent proposed, would seriously inconvenience the public who would either have to change their method of doing business or who would divert their trade to other points, and it would also practically destroy large business enterprises and interests that had developed and were being operated at Meridian, Mississippi, because the business could not be operated profitably without the conditions remaining, in a large extent, in the status they were prior to the taking off of the said train.

The complainant, through its manager, had requested the Mississippi Railroad Commission to call an extra or special meeting for the purpose of getting permission to withdraw the train service, which meeting was called and at which the manager appeared and stated his reasons for desiring to withdraw the facilities. The Commission decided to look into the matter before making a final order in regard to it and so notified the manager at said meeting and the said manager, without waiting for the decision of the Commission, proceeded to discontinue its said train service. The Commission thereupon cited the complainant to appear and show cause why the service should not be restored so far as the State of Mississippi was concerned and after hearing both the complainant and citizens interested, made the orders requiring said trains to be restored as shown in the Exhibits to the bill of complaint.

The State of Mississippi first, in the year of 1884, enacted statutes for the government and control of railroads and other common carriers which said act has been amended from time to time, and the law on the subject is now contained in Chapter 139, of the Code of 1906, and the several amendments thereto. The plan of supervision is a commission consisting of three members, each one

from a separate district and which are given many powers under the said chapter and have exercised general powers of supervision from the year 1884 to the present time. The finding of the commission are, by statute, prima facie correct (Sec. 4836).

Section 4836 of the Code of 1906 reads as follows:

"**Findings in Writings; Proof of; Effect of.**—All findings of the Commission and the determination of every matter by it shall be made in writing and placed upon its minutes, and proof thereof shall be made by a copy of the same duly certified by the secretary under the seal of the Commission; and whenever any matter has been determined by the Commission, in the course of any proceeding before it the fact of such determination, duly certified, shall be received in all courts and by every officer in civil cases as prima facie evidence that such determination was right and proper; and the record of the proceedings of the Commission shall be deemed a public record, and shall at all seasonable times be subject to the inspection of the public."

BRIEF.

By Section 4836, of the Code, all findings of the Commission and all its determinations are required to be made in writing and placed on its minutes, and this section further provides that such findings shall be received in all courts and by every officer in civil cases as prima facie evidence that such determinations were right and proper and that the record shall be deemed a public record and shall at all seasonable times be subject to the inspection of the public.

By Section 4833 of the Code, all railroads and other

common carriers are required to take notice of time required for the making of reports, etc., and requires that in changes affecting traffic, they have ten days' notice, and in other cases not less than five days' notice of the hearing.

Section 4833 of the Mississippi Code of 1906 reads as follows:

> "**Notices to Railroads and Other Common Carriers.**—All railroads and other common carriers are required to take notice of the time of making the returns and reports required by law. Railroads must be given ten days' notice of the time and place at which any revision of its tariff charges, or complaint concerning the same, will be considered. In all cases of complaint against a railroad or other common carrier the Commission shall give the party complained of such reasonable notice as it may adjudge proper, but not less than five days. In other cases, where notice is given or required to be, or is proper to be given to any railroad or other common carrier, five days' notice shall be sufficient; but where anything is required to be done, such reasonable time must be allowed therefor as the Commission shall deem proper."

By Section 4834 this notice is deemed sufficiently served when deposited in the postoffice, postage prepaid, addressed to the railroad or other common carrier, or to a chief officer or other officer at its principal place of business, etc. This notice, it is contended by the Attorney General, is not a notice in a judicial proceeding, but is merely a notice of a hearing, legislative in its nature, for the purpose of passing regulations which are legislative and administrative rather than judicial.

Section 4834 of the Mississippi Code of 1906, reads as follows:

"**Notice to Railroads, etc.; How Served.**—All notices given or required to be given to or served upon a railroad or common carrier of passengers, freight, or intelligence, shall be sufficiently served and executed upon any railroad or other common carrier when deposited in the postoffice, postage paid, addressed to the railroad or other common carrier, or to a chief or other officer of the railroad or other carrier at its principal place of business in this State, if any there be, and if not, so deposited and addressed in the care of an officer, agent, or employe of the railroad or other carrier at an office or place of business in this State of the railroad or other carrier; or it may be served upon any such officer, agent, or employe, wherever found, by an officer and due return thereof made, as if it were the process of a court. In all cases where notice is given or required to be given, and where the time of notice is not specified, five days' notice shall be sufficient."

The Supreme Court of Mississippi has held that the Mississippi Railroad Commission is not a judicial body and cannot enter a judicial decision, in the case of **I. C. R. R. Co. vs. Dodd,** 61 So., 743. It is submitted that the notice under the section cited is sufficient.

It is contended that the Railroad Commission has not the powers conferred upon it by State law to require the operation of the trains or train facilities ordered in this order before the Court. It has been the custom for the Commission to exercise general powers of supervision, and it is submitted from a consideration of all the provisions of Chapter 139, of the Code, that this power is plainly conferred upon the Commission.

By Section 184, of the Constitution, railroads are common carriers and public highways of the State.

Section 184 of the Constitution of Mississippi reads as follows:

"**Section 184.** All railroads which carry persons or property for hire shall be public highways, and all railroad companies so engaged shall be common carriers. Any company organized for that purpose under the laws of the State, shall have the right to construct and operate a railroad between any points within this State, and to connect at the State line with roads of other states. Every railroad company shall have the right with its road to intersect, connect with or cross any other railroad; and all railroad companies shall receive and transport each other's passengers, tonnage, and cars, loaded or empty, without unnecessary delay or discrimination."

Section 4839, of the Mississippi Code of 1906, reads as follows:

"**Railroads Are Public Highways; Not Allowed to Discriminate; Extortion Defined.** — The track of every railroad which carries persons or property for hire, is a public highway, over which all persons have equal rights of transportation for themselves and their propety, and for passengers, freight and cars, on the payment of reasonable compensation to the railroad for such transportation; and if any railroad corporation, or person managing a railroad, shall demand and receive unreasonable compensation for the service rendered in the transportation of passengers or freight, or more than allowed by the tariff of rates fixed by the Commission, or by such person or corporation with its approval, or more than the rate specified in a bill of lading issued by authority of the railroad; or if any railroad shall, for its advantage, or for the advantage of a connecting line, or for that of any person, locality, or corporation, make any discrimination in transportation against any person, locality or corporation, unless authorized by the Commission; or if any railroad company shall charge more for a short haul than for a

long one, under substantially similar circumstances and conditions, without the sanction of the Railroad Commission, such person or corporation, in either case, shall be guilty of extortion, and may be punished therefor criminally, besides being liable civilly."

It is, therefore, clear that the State has a right to make regulations governing the facilities and charges on public highways.

Stone vs. Yazoo, etc., Co., 62 Miss., 607;
Stone vs. Natchez R. R. Co., 62 Miss., 646;
A. & V. R. R. Co. vs. Railroad Commission, 38 So., 356.

By Section 4843, the Railroad Commission is empowered to fix the charge of and shall supervise and regulate all persons, natural or artificial, who may own or operate express, telegraph, telephone and sleeping car companies, car service associations or other associations governing or controlling cars or rolling stock of railroads in this State. The section reads as follows:

"**Charges of All Carriers Fixed; Supervision of.**— The Railroad Commission may fix the charges of, and shall supervise and regulate all persons, natural or artificial, who may own or operate express, telegraph, telephone, and sleeping-car companies, car service associations, or other associations governing or controlling cars or rolling stock of railroads in this State in the same manner as railroads; and it is the duty of each person, natural or artificial, owning or operating such express, telegraph, telephone, and sleeping car company to have and maintain fixed rates for doing business, which shall, without discrimination between persons, corporations, or localities, be applicable under similar circumstances to all persons alike; to submit their tariff of charges of such companies to the

Commission for approval, and to comply with the orders and regulations of the Commission made in supervising their companies, in like manner and under like penalties against their companies, their officers and employes, as is provided in the case of railroads; and the persons, whether natural or artificial, owning or operating such companies, shall be liable civilly and criminally for extortion in the same manner as railroads."

This language is very general and plenary in its terms and makes it the duty of the Commission to supervise and regulate all companies or associations that control or govern rolling stock of railroads in this State.

By Section 4849, the Commission is given express power to hear and determine complaints as to schedules where they are inconvenient to the public. The section reads as follows:

"**Complaints of Schedules and Tariffs; What to Contain; Notice; Hearing and Determination.** — The Commission shall docket, hear and determine all complaints made of any time schedule, or of the tariff of rates, joint or several made by any railroad, or fixed or approved by the Commission, on the ground that the same, in any respect, is, in the case of time schedule, unnecessarily inconvenient for the public, or, in the case of tariff rates, that the charges are for more than just compensation, or that such charges or any of them amount to or operate so as to effect unjust discrimination. The complaint must be in writing, and specify the grounds of complaint or the items in the tariff against which complaint is made; and if it appear to the Commission that the matter ought to be investigated, the Commission shall forthwith furnish to the railroad a copy of the complaint, together with notice of the time and place of hearing; and at the time and place named, the Commission shall hear the parties to

the controversy, in person or by counsel, or both, and such evidence as may be offered, oral or in writing, and may examine witnesses on oath, conforming the mode of proceedings, as nearly as may be convenient, to that pursued by arbitrators, allowing such time and latitude to each side, and regulating the opening and closing of any argument as the Commission may consider best adapted to arrive at the truth; and when the hearing is concluded, the Commission shall give notice of any change deemed proper by it to be made to the railroad, and require compliance with its order."

Section 4860, of the Code, expressly provides that every railroad shall furnish a sufficient number of passenger cars to comfortably accommodate and seat its passengers, and if they fail so to do, that the Railroad Commission shall make an order requiring the furnishing of such as are necessary for the public convenience and that such order of the Commission shall be deemed prima facie reasonable and proper. The section reads as follows:

"**Sufficient Passenger Cars to be Provided.**—Every railroad shall furnish a sufficient number of passenger cars to comfortably accommodate and seat its passengers; and if any railroad shall fail to do so, the Commission shall entertain the petition of any person cognizant of the facts. When the petition is filed, the railroad shall be duly notified thereof, and, after investigating a case, the Commission shall make and certify to the railroad such orders as to the number and character of passenger coaches necessary for the public convenience as the Commission shall deem proper; and in any proceeding concerning the matter, such order of the Commission shall be deemed prima facie reasonable and proper."

There are very many other express powers conferred upon the Commission which will not be necessary to be

cited specifically in this brief, but the Court will see, from a reading of the chapter, that the Legislature has very fully delegated to the Commission all powers belonging to the State governing the subject matter. There are some minor instances where perhaps the authority has not been delegated where the Legislature could authorize other things to be required by the Commission.

Taking the last two sections cited together, it is perfectly evident that the object of the Legislature was to confer upon the Commission full power to require the railroad companies to furnish a sufficient number of cars which would arrive and depart at suitable and convenient seasons for the accommodation of the traveling public. It is immaterial whether the company can operate one train so as to make all these schedules required by the Commission or whether it shall operate different trains. It is perfectly manifest that conditions may exist where it would be imposible to furnish the facilities required by the public if the train operated over the entire line of the railroad or even over a very considerable portion of it. When the Commission requires a sufficient number of cars to be furnished to take care of the public and requires that cars will be operated so as to arrive and depart from particular points, it becomes wholly immaterial whether it requires more than one train or whether all the acts can be performed by one train of cars. It is also immaterial as to how much propelling power or locomotion is used so that the trains make the schedules required and pull the cars furnished provided operating power does not interfere with the comfort or health of the passengers. It must be evident from a careful reading of these statutes that the Legislature has conferred upon the Railroad Commission the power to make the orders which it has made in this case.

The question of power of the Commission and the power of the State to create such a Commission was promptly raised by the defendant represented by its

creditor, Farmers' Loan & Trust Company in the case of **Stone, et al.**, composing the **Railroad Commission vs. Farmers' Loan & Trust Company,** 116 U. S., 307; 29 Law Edition, 636. At page 645, of the Law Edition Report of this case, the Court settled the powers, it seems to me, in the Commission which it is now claimed do not exist. It was adjudicated in that case that the Mobile & Ohio Railroad Company was, for purposes of operation and control, a Mississippi corporation insofar as its lines and business in Mississippi were concerned. The Court said:

"There can be no doubt that each of the states through which the M. & O. R. R. passes incorporated the company for the purpose of securing the construction of a railroad from Mobile, through Alabama, Mississippi, Tennessee, and Kentucky, to some point near the mouth of the Ohio river, where it would connect with another railroad to the Lakes, and thus form a continuous line of inter-state communication between the Gulf of Mexico in the South and the Great Lakes in the North. It is equally certain that Congress aided in the construction of parts of this line of railroad so as to establish such a route of travel and transportation. But it is none the less true that the corporation created by each state is, for all the purposes of local government, and that its railroad within the State, is a matter of domestic concern. Every person, every corporation, everything within the territorial limits of a state is, while there, subject to the constitutional authority of the State Government. Clearly, under this rule Mississippi may govern this corporation, as it does all domestic corporations, in respect to every act and everything within the State which is the lawful subject of State Government. It may, beyond all question, by the settled rule of decision in this Court, regulate freights and fares for business done exclusively within the State, and it would seem to be a matter of domestic concern to prevent the company from discriminating against persons and places in Mississippi.

So it may make all needful regulations of a police character for the government of the company while operating its road in that jurisdiction. In this way it may certainly require the company to fence so much of its road as lies within the State; to stop its trains at railroad crossings; to slacken speed while running in a crowded thoroughfare; to post its tariffs and time tables at proper places; and other things of a kindred character affecting the comfort, the convenience, or the safety of those who are entitled to look to the State for protection against the wrongful or negligent conduct of others. This company is not relieved entirely from State regulation or State control in Mississippi, simply because it has been incorporated by and is carrying on business in the other States through which its roads run. While in Mississippi it can be governed by Mississippi in respect to all things which have not been placed by the Constitution of the United States within the exclusive jurisdiction of Congress; that is to say, using the language of this Court in **Cardwell vs. Bridge Co.**, 113 U. S., 210 (Bk. 28, L. Ed. 961), 'When the subjects on which it is exerted are national in their character, and admit and require uniformity of regulations affecting all States alike.' Under this rule nothing can be done by the Government of Mississippi which will operate as a burden on the inter-state business of the company or impair the usefulness of its facilities for inter-state traffic. It is not enough to prevent the State from acting, that the road in Mississippi is used in aid of inter-state commerce. Legislation of this kind to be unconstitutional, must be such as will necessarily amount to operate as a regulation of business without the State as well as within.''

The power of the State to control railroads has been settled in many cases in the United States Supreme Court. The question of the State's power in such matters was elaborately considered by the Supreme Court of the United States in the case of **Lake Shore & Michigan**

Southern Railway Company vs. Ohio, 173 U. S., 285, 43 L. Ed., 702. The powers are recognized in the following language:

"1. The power exists in each State by appropriate enactments not forbidden by its own or the Federal Constitution, to regulate the relative rights and duties of all persons and corporations within its jurisdiction so as to provide for the public convenience and the public good.

"3. The power of the State by appropriate legislation to provide for the public convenience stands upon the same grounds as its power by appropriate legislation to protect the public health, the public morals, or the public safety.

"4. The Ohio statute (Ohio Laws 1889, p. 291, Rev. Stat. 1890, Sec. 3220), requiring each railroad company whose road is operated within the State to cause three each way of its regular trains carrying passengers, if so many are run daily, Sundays excepted, to stop at a station, city or village containing over 3,000 inhabitants, long enough to receive and let off passengers, is for the public convenience, and is not a regulation of inter-state commerce and unconstitutional when applied to the trains of a corporation of the State engaged in such commerce.

"5. Such railroad accepted its charter subject to the condition that it would conform to such reasonable State regulations as were for the public interest and not in violation of the supreme law of the land.

"7. U. S. Rev. Stat., Sec. 5258, authorizing railroad companies to carry government supplies, mail, etc., from one State to another, does not prevent the State from enacting such regulations, with respect, at least to a railroad corporation of its own creation, as

are not directed against inter-state commerce, and are not regulations thereof, but only incidentally or remotely affect it, and are designed to promote the public convenience."

At pages 704 and 705, of the Law Edition, the Court determined definitely that the power of the State to regulate railroads existed for the purpose of promoting the public convenience as well as the public health and safety, the Court saying:

"It is insisted by Counsel that these and observations to the same effect in different cases show that the police powers of the States, when exerted with reference to matters more or less connected with inter-state commerce, are restricted in their exercise, so far as the national Constitution is concerned, to regulations pertaining to the health, morals or safety of the public, and do not embrace regulations designed merely to promote the public convenience.

"This is an erroneous construction of the adjudications of this Court. While cases to which counsel refer involved the validity of State laws having reference directly to the public health, the public morals, or the public safety, in no one of them was there any occasion to determine whether the police powers of the States extended to regulations incidentally affecting inter-state commerce, but which were designed only to promote the public convenience or the general welfare. There are, however, numerous decisions by this Court to the effect that the States may legislate with reference simply to the public convenience, subject, of course, to the condition that such legislation be not inconsistent with the national Constitution, nor with any act of Congress passed in pursuance of that instrument, nor in derogation of any right granted or secured by it. As the question now presented is one of great impor-

tance, it will be well to refer to some cases of the latter class.

"In **Gilman vs. Philadelphia,** 3 Wall., 713, 729 (18:96, 101), which involved the validity of a State enactment authorizing the construction of a permanent bridge over the Schuylkill river within the limits of Philadelphia, and which bridge in fact, interfered with the use of the river by vessels of a certain size, which had been long accustomed to navigate it, the Court said: 'It must not be forgotten that bridges which are connecting parts of turnpikes, streets, and railroads, are means of commercial transportation as well as navigable waters, and that the commerce which passes over a bridge may be much greater than would be transported on the water it obstructs.' "

The Court then reviewed numerous cases of the decisions of its own Court to show the soundness of this conclusion. The Court added:

"Now, it is evident that these cases had no reference to the health, morals, or safety of the people of the State, but only to the public convenience. They recognized the fundamental principle that, outside of the field directly occupied by the general government under the powers granted to it by the Constitution, all questions arising within a State that relate to its fraternal order, or that involve the public convenience or the general good, are primarily for the determination of the State, and that its legislative enactments, relating to those subjects, and which are not inconsistent with the State Constitution, are to be respected and enforced in the Courts of the Union, if they do not by their operation directly entrench upon the authority of the United States or violate some right protected by the National Constitution. The power here referred to is, to use the words of Chief Justice Shaw, the power

'to make, ordain, and establish all manner of wholesome and reasonable laws, statutes, ordinances, either with penalties or without, not repugnant to the Constitution, as they shall judge to be for the good and welfare of the Commonwealth and of the subjects of the same.' **Com. vs. Alger,** 7 Cush., 53, 85. Mr. Cooley well said: 'It cannot be doubted that there is ample power in the legislative department of the State to adopt all necessary legislation for the purpose of enforcing the obligations of railway companies as carriers of persons and goods to accommodate the public impartially, and to make every reasonable provision for carrying with safety and expedition.' **Cooley's Const. Lim.,** 6th Ed., p. 715. It may be that such legislation is not within the 'police power' of a State, as those words have been sometimes, although inaccurately used. But, in our opinion, the power, whether called police, governmental, or legislative, exists in each State, by appropriate enactments not forbidden by its own Constitution or by the Constitution of the United States, to regulate the relative rights and duties of all persons and corporations within its jurisdiction, and, therefore, to provide for the public convenience and the public good. This power in the States is entirely distinct from any power granted to the general government, although when exercised it may sometimes reach subjects over which national legislation can be constitutionally extended."

Again, on page 708, of the Law Edition, the Court said:

"Consistently with these doctrines it cannot be adjudged that the Ohio statute is unconstitutional. The power of the State by appropriate legislation to provide for the public convenience stands upon the same ground precisely as its power by appropriate legislation to protect the public health, the public morals, or the public safety. Whether legislation of either kind

is inconsistent with any power granted to the general government is to be determined by the same rules.

"In our judgment, the assumption that the statutes of Ohio was not directed against inter-state commerce, but is a reasonable provision for the public convenience, is not unwarranted. The requirement that a railroad company whose road is operated within the State shall cause three, each way, of its regular trains carrying passengers, if so many are run daily, Sundays excepted, to stop at any station, city, or village of three thousand inhabitants, for a time sufficient to receive and let off passengers, so far from being unreasonable, will greatly subserve the public convenience. The statute does not stand in the way of the railroad company running as many trains as it may choose between Chicago and Buffalo without stopping at intermediate points, or only at very large cities on the route, if in the contingency named in the statute the required number of trains stop at each place containing three thousand inhabitants, long enough to receive and let off passengers. It seems from the evidence that the average time required to stop a train and receive and let off passengers is only three minutes. Certainly, the State of Ohio did not endow the plaintiff in error with the rights of a corporation for the purpose simply of subserving the convenience of passengers traveling through the State between points outside of its territory. 'The question is no longer an open one,' this Court said in **Cherokee Nation vs. Southern Kansas Railway Company**, 135 U. S. 641, 657 (34:295, 302), 'as to whether a railroad is a public highway, established primarily for the convenience of the people, and to subserve public ends, and, therefore, subject to governmental control and regulation. It is because it is a public highway and subject to such control that the corporation by which it is constructed and by which it is to be maintained may be permitted, under legislative sanction, to appropriate property for

the purpose of a right of way, upon making just compensation to the owner, in the mode prescribed by law.' In the construction and maintenance of such a highway under public sanction, the corporation really performs a function of the State. **Smythe vs. Ames,** 169 U. S., 466, 544 (42; 819, 848). The plaintiff in error accepted its charter subject necessarily to the condition that it would conform to such reasonable regulations as the State might from time to time establish, that were not in violation of the supreme law of the land. In the absence of legislation by Congress, it would be going very far to hold that such an enactment as the one before us was in itself a regulation of inter-state commerce. It was for the State to take into consideration all the circumstances affecting passenger travel within its limits, and, as far as practicable, make such regulations as were just to all who might pass over the road in question. It was entitled, of course, to provide for the convenience of persons desiring to travel from one point to another in the State on domestic trains. But it was not bound to ignore the convenience of those who desired to travel from places in the State to places beyond its limits, or the convenience of those outside of the State who wished to come into it. Its statute is in aid of inter-state commerce of that character. It was not compelled to look only to the convenience of those who desired to pass through the State without stopping. Any other view of the relations between the State and the corporation created by it would mean that the directors of the corporation could manage its affairs solely with reference to the interests of the stockholders, without taking into consideration the interests of the general public. It would mean, not only that such directors were the exclusive judges of the manner in which the corporation should discharge the duties imposed upon it in the interest of the public, but that the corporation could so regulate the running of its inter-state trains as to build up cities and towns at

the ends of its line or at favored points, and by that means destroy or retard the growth and prosperity of those at intervening points. It would mean also that, beyond the power of the State to prevent it, the defendant railway company could run all its trains through the State without stopping at any city within its limits, however numerous its population, and could prevent the people along its road within the State who desired to go beyond its limits from using its interstate trains at all, or only at such points as the company chose to designate. A principle that in its application admits of such results cannot be sanctioned."

In the case of **Wis. Minn. & Pa. Railroad Company vs. Jacobson**, 179 U. S., 287, 45 Law Ed., 195, the Court again passed upon the power of the State to require a public facility to be installed by a railroad company, the particular facility being track connections in that particular case. In discussing the power of the State, the Court, at page 199, of the Law Edition, said:

"Railroads have from the very outset been regarded as public highways, and the right and the duty of the government to regulate in a reasonable and proper manner, the conduct and business of railroad corporations have been founded upon that fact. Constituting public highways of a most important character, the function of proper regulation by the government springs from the fact that in relation to all highways the duty of regulation is governmental in its nature. At the present day there is no denial of these propositions. **Olcott vs. Fond du Lac County Supers.**, 16 Wall., 678, 694; 21 Law Ed., 382, 388; **Cherokee Nation vs. Southern Kansas R. Co.**, 135 U. S., 641; 34 L. Ed., 295; 10 Supt. Ct. Rep., 965; **U. S. vs. Joint Traffic Asso.**, 171 U. S., 505-569, 570; 43 L. Ed., 259-287, 288; 19 Sup. Ct. Rep., 25; **Lake Shore & M. S. R. Co. vs. Ohio**, 173 U. S., 285, 301; 43 Law Ed., 702, 708; 19 Sup. Ct. Rep., 465.

"It is because they are such highways that the land upon which the rails are laid, and also that which may be necessary for the other purposes of the corporation, is said to be used for a public purpose, and on that ground the power of eminent domain which is given them is held to be a constitutional exercise of legislative authority. The right of the legislature to tax in furtherance of such use is founded upon the same considerations that the use is a public one, and, therefore, taxation in support of such use is valid. **Olcott vs. Fond du Lac County Supers.**, 16 Wall., 678, 694; 21 Law Ed., 382, 388. The companies hold a public franchise, and governmental supervision is, therefore, valid. They are organized for the public interests and to subserve primarily the public good and convenience.

"While this power of regulation exists, it is also to be remembered that the legislature cannot under the guise of regulation, interfere with the proper conduct of the business of the railroad corporation in matters which do not fairly belong to the domain of reasonable regulation. **Lake Shore & M. S. R. Co. vs. Smith,** 173 U. S., 684; 43 L. Ed., 858; 19 Sup. Ct., Rep., 565."

In the case of **Atlantic Coast Line Railroad Company vs. N. C.**, 206 U. S., I; 51 L. Ed., 933, II Anno. Cases 398 and note, the Court was again called upon to decide whether a State Railroad Commission could require the operation of a facility deemed necessary for the convenience of the people traveling within a local State. In paragraph 2, of the head notes of this case, the rule is stated:

"The power of the State to regulate railroads extends to securing to the public reasonable facilities for making connections between different carriers."

At page 942 of the L. Ed., 19 of the regular edition, in discussing this proposition, the Court said:

"The elementary proposition that railroads, from the public nature of the business by them carried on and the interest which the public have in their operation, are subject, as to their State business, to State regulation, which may be exerted either directly by the legislative authority or by administrative bodies endowed with power to that end, is not and could not be successfully questioned, in view of the long line of authorities sustaining that doctrine. Accepting this general rule, the assignments of error rest upon the hypothesis that the order which the Court below enforced was so arbitrary and unreasonable in its character as to transcend the limits of regulation, and to be in effect a denial of due process of law, or a deprivation of the equal protection of the laws.

"As the public right to regulate highways and the private right of ownership of such property coexist and do not the one destroy the other, it has been settled that the right of ownership of railway property, like other property rights, finds protection in constitutional guaranties, and, therefore, wherever the power of regulation is exerted in such an arbitrary and unreasonable way as to cause it to be in effect not a regulation, but an infringement upon the right of ownership, such an exertion of power is void because repugnant to the due process and equal protection clauses of the 14th Amendment. The result, therefore, is that the proposition relied upon is well founded if it be that the order which the Court below enforced was of the arbitrary and unreasonable character asserted."

The Court cites a long list of the cases of the United States Supreme Court sustaining this view: Citing:

On State Control Carriers.

Chicago, B. & Q. R. Co. vs. Iowa (Chicago, B. & Q. R. Co. vs. Cutts), 94 U. S., 155, 24 L. Ed., 94; **Peik vs. Chi-**

cago & N. W. R. Co., 94 U. S. 164, 24 L. Ed., 97; **Chicago, M. & St. P. R. Co. vs. Ackley,** 94 U. S., 179, 24 L. Ed., 99; **Winona & St. P. R. Co. vs. Blake;** 94 U. S. 180, 24 L. Ed., 99; **Stone vs. Wisconsin,** 94 U. S. 181, 24 L. Ed., 102; **Ruggles vs. Illinois,** 108 U. S., 536, 27 L. Ed. 816, 2 Sup. Ct. Rep. 832; **Illinois C. R. Co. vs. Illinois,** 108 U. S. 541, 27 L. Ed., 818, 2 Sup. Ct. Rep., 839; **Stone vs. Farmers' Loan and Trust Co.,** 116 U. S., 307, 29 L. Ed., 636, 6 Sup. Ct. Rep., 334, 388, 1191; **Stone vs. Illinois C. R. Co.,** 116 U. S. 347, 29 L. Ed., 650, 6 Sup. Ct. Rep., 348; **Stone vs. New Orleans & N. E. R. Co.,** 116 U. S. 352, 29 L. Ed., 651, 6 Sup. Ct. Rep., 349, 391; **Dow vs. Beidelman,** 125 U. S. 680, 31 L. Ed. 841, 1 Inters. Com. Rep. 56, 8 Sup. Ct. Rep., 1028; **Charlotte C. & A. R. Co. vs. Gibbes,** 142 U. S. 386, 35 L. Ed., 1051, 12 Sup. Ct. Rep. 255; **Chicago & G. T. R. Co. vs. Wellman,** 143 U. S. 339, 36 L. Ed. 176, 12 Sup. Ct. Rep. 400; **Pearsall vs. Great Northern R. Co.,** 161 U. S., 646, 665, 40 L. Ed., 838, 844, 16 Sup. Ct. Rep., 705; **Louisville & N. R. Co. vs. Kentucky,** 161 U. S., 677, 695, 40 L. Ed. 849, 857, 16 Sup. Ct. Rep. 714; **Wisconsin, M. & P. R. Co. vs. Jacobson,** 179 U. S. 287, 45 L. Ed., 194, 21 Sup. Ct. Rep., 115; **Minneapolis & St. L. R. R. Co. vs. Minnesota,** 186 U. S., 257, 46 L. Ed., 1151, 22 Sup. Ct. Rep., 900; **Minneapolis & St. L. R. Co. vs. Minnesota,** 193 U. S., 53, 48 L. Ed., 614, 24 Sup. Ct. Rep. 396; **Chicago, B. & A. R. Co. vs. Illinois,** 200 U. S., 561, 584, 50 L. Ed., 596, 605, 26 Sup. Ct. Rep., 341; **Atlantic Coast Line R. Co. vs. Florida,** 203 U. S., 256, 51 L. Ed., 174, 27 Sup. Ct. Rep., 108; **Seaboard Air Line R. Co. vs. Florida,** 203 U. S. 261, **ante,** 175, 27 Sup. Ct. Rep., 109.

Due Process.

Stone vs. Farmers' Loan & Trust Co., 116 U. S., 307, 331, 29 L. Ed., 636, 644, 6 Sup. Ct. Rep., 334, 388, 1191; **Chicago, M. & St. P. R. Co. vs. Minnesota,** 134 U. S., 418, 455, 33 L. Ed., 970, 979, 3 Inters. Com. Rep. 209, 10 Sup. Ct. Rep., 462, 702; **Chicago & G. T. R. Co. vs. Wellman,** 143 U. S. 339, 344, 36 L. Ed., 176, 179, 12 Sup. Ct. Rep.

400; **Reagan vs. Farmers' Loan & T. Co.**, 154 U. S., 362, 399, 38 L. Ed., 1014, 1024, 4 Inters. Com. Rep., 560, 14 Sup. Ct. Rep., 1047; **St. Louis & S. F. R. Co. vs. Gill**, 156 U. S., 649, 657, 39 L. Ed., 567, 570, 15 Sup. Ct. Rep., 484; **Chicago B. & Q. R. Co. vs. Chicago**, 166 U. S., 226, 241, 41 L. Ed., 979, 986, 17 Sup. Ct., Rep. 581; **Smyth vs. Ames**, 169 U. S., 466, 512, 42 L. Ed., 819, 838, 18 Sup. Ct. Rep. 418; **Chicago, M. & St. P. R. Co. vs. Tompkins**, 176 U. S., 167, 172, 44 L. Ed., 417, 420, 20 Sup. Ct. Rep. 336; **Minneapolis & St. L. R. Co. vs. Minnesota**, 186 U. S., 257, 46 L. Ed., 1151, 22 Sup. Ct. Rep., 900; **Chicago B. & Q. R. Co. vs. Illinois**, 200 U. S., 561, 592, 50 L. Ed., 596, 609, 26 Sup. Ct. Rep., 341.

On the subject of State control and regulation of railroads and other public service corporations, in addition to the foregoing authorities, see **City of Gainesville vs. Gainesville Gas & Electric Power Co.**, 62 So. 919, — Fla., ——; **State ex rel Ellis vs. Tampa Water Works Co.**, 57 Fla. 533, 539, 48 So. 639, 22 L. R. A., new series, 680; **I. Wyman Pub. Service Corporations**, Sec. 113; **Gas Light Co. vs. Zanesville**, 47 Ohio St. 35, 23 N. E., 60; **State ex rel vs. Atlantic Coast Line R. Co.**, 53 Fla., 650, 44 So. 213, 13 L. R. A. (new series) 320, 12 Ann. Cas., 359; **People ex rel Stead vs. Chicago, etc., R. Co.**, 223, Ill., 581, 7 Ann. Cas. I; **Kavanaugh Co. vs. So. Ry. Co.**, I Ann. Cas. 705; **People ex rel Cantrell vs. St. Louis, etc., R. Co.**, 35, L. R. A., 656, 45 N. E. 824, 52 N. E. 292; **Chicago, etc., R. Co. vs. People**, 152 Ill., 230, 26 L. R. A. 224, 38 N. E. 562; **ex parte Attorney General**, 17 N. B. 667; **State ex rel vs. Missouri, etc., R. Co.**, 55, Kan. 708, 29 L. R. A. 444, 49 Am. St. Rep. 278, 41 Pac. 964; **Ohio and M. R. Co. vs. People**, 120 Ill., 200, II N. E., 347; **Farmers' Loan & Trust Co. vs. Henning, Federal Case No. 4666, King vs. Severn, etc., R. Co.**, 2 Barn. and Ald., 646; **People vs. Albany, etc., R. Co.**, 16 How. Pr. 523, II Abbott Pr. 136; **People vs. Albany and V. R. Co.**, 24 N. Y., 261; 82 Am., Dec. 295; **Loraine vs. Pittsburg, etc., R. Co.**, 205

Pa., 132, 61 L. R. A., 502, 54 Atlantic 580; **Railroad Commission vs. Portland, etc., R. Co.**, 63 Me. 269, 18 Am. Rep., 208; **State vs. Missouri Pacific R. Co.**, 33 Kan. 176, 5 Pac., 772; **Pensacola and A. R. Co. vs. State**, 25 Fla. 310, 324. 3 L. R. A., 661; 2 Int. Com. Rep. 522, 5 So., 833; 839; **United States vs. Trans Missouri Freight Asso.**, 166 U. S., 290, 41 L. Ed. 1007-1024, **N. C. Corp. Com. vs. Atl. Coast Line R. Co.**, 137 N. C. I, 115 Am. St. Rep. 636, 49 S. E 191; **San Antonio Street Ry. Co. vs. State**, 90 Tex. 520, 523, 35 L. R. A., 662, 59 A. M. St. 834, 39 S. W. 926; **Branch vs. Wilmington, etc., R. Co.**, 77, N. C. 347; **Talcott vs. Pine Grove Township**, I. Flipp 144, Fed. Cases No. 13,735. In **City of Gainesville vs. Gainesville Gas & Electric Power Co.**, 62 So. 919, the Court said: "The policy of the law is to require by mandatory process the performance by public utility corporations of their duties to the public." It also held that an express contract is not essential to establish reciprocal rights between a public service corporation and the public it undertakes to serve. Such rights were said to arise by implication of law. It was also said that the performance of such duties might be enforced by appropriate legal proceedings. It was held in this case that injunction was an appropriate remedy, and reversed the trial Court and remanded the case for further proceedings by injunctive orders, etc.

It seems undoubted that the Commission has the power to require the operation of a local or intra-state train wherever it is deemed necessary by the public authority for the public convenience. None of the reasons set forth for refusal to operate said trains or for an injunction thereon will prevent the facility being required unless it can be shown that the intra-state business done by the company within the State of Mississippi, taken as a whole, amounts to such a loss as would constitute a taking of property without due process of law. It is settled that the carrying of the United States mail does not exempt a railroad company from the State law requiring the facility to the public. See:

Gadsden vs. Minn., 166 U. S., 427; 17 S. C., 627; 41 L. Ed., 1064;
Ga. Railway & Banking Co. vs. Smith, 128 U. S., 174; 32 L. Ed., 377;
Chi. M. & St. P. R. R. Co. vs. Minn., 134 U. S. 418; 33 L. Ed., 970.

It is next submitted that the reasonableness of the schedule or the conveniences cannot be determined until the carrier shall have made some test showing that there is an actual loss from its total intra-state operations as well as a loss in the particular facility; that the same rule will apply in determining whether the facilities which are required to be operated that exists for determining the reasonableness of a rate and that before the defendant should be granted an injunction against the order of the kind here involved it should point out to the Court with certainty and by at least strong evidence that its total local business is unprofitable and that the particular facility can only be operated at a loss. See:

Chi. M. & St. P. R. R. Co. vs. Tompkins, 176 U. S., 167.

This must be determined entirely with the consideration of the local or intra-state business separate and apart from the inter-state business.

Smith vs. Ames, 169 U. S., 466; 18 S. C., 418; 42 L. Ed., 819.

Many authorities could be cited but they are referred to in the authorities already cited which show beyond question the power of the State to enact and prescribe such rules and requirements as are here involved.

I respectfully submit to the Court that the complainant has not made a showing that will entitle it to the relief sought. The bill does not state, nor does the proof

show, what the total earnings and expenses of the complainant are in reference to its intra-state business in Mississippi, nor does the proof show any state of facts from which the conclusion can be fairly deducible that the intra-state business in Mississippi does not justify furnishing the facilities required.

I submit, further, that the Court should not be influenced in this case by the fact, if it be a fact, that the country is suffering a temporary loss of business due to war conditions and other things that are not permanent in their nature. The railroad company should be required to take its share of the loss and depression growing out of the unusual conditions in common with the other businesses of the community. In this age and time, the welfare and prosperity of the country are so dependent upon railroads that it lies within the power of a railroad company, if it shall be permitted to use unbridled discretion, to destroy one community and build up another at its expense. The railroads being public highways and the public being dependent upon the operation of the said highways and the furnishing of reasonable conveniences make the railroad company a different business institution from the ordinary business affairs of life. The railroad company, by its franchise, has taken a contract to operate a State highway for the benefit of the public for such incidental benefits as may accrue to it from such operation, and while it is true that they are entitled to proper compensation for the services performed, still they may not withdraw the service from the public. If the operation of the facilities require an addition to its rates, it is entitled to raise its rates. It is not more restricted in the matter of rates than it is in the matter of facilities; indeed, the facility is the thing of primal importance to the public. It is certainly true of every business that it has its periods of prosperity and adversity. No institution can expect to make money every day of its existence nor upon every feature of its

business. This is especially true of large institutions like the railroad systems of the country. The time required for operation must be a reasonable period of time that would disclose the conditions that exist at different seasons of the year. It is a fact observable of all men that there are times when the public travel is much heavier than at other times, and it is also a fact that the freight business of a railroad is much more voluminous and profitable at some seasons of the year than at others. All that is necessary is that taking a reasonable period as a criterion that the business of the company is on the whole profitable. This refers, of course, to the intra-state business in Mississippi, because the Courts of the United States, which are the supreme authority in such questions, have decided that questions of domestic or intra-state commerce must be considered on its basis separate from that of inter-state commerce. It certainly should appear to the satisfaction of the Court by a strong preponderant weight of the evidence and such evidence as certainly points to results, that the orders would be confiscatory of the property of the defendant.

In this connection, I submit that it is wholly unreasonable for the complainant to have discontinued its facilities in such a radical degree. It is certainly unreasonable for a railroad company which had put the facility on at three distinct periods of time, long separated from each other, to withdraw, all at one move, all of these facilities without experiment and determining whether a portion of them could be operated profitably or not. A reasonable man, it seems to me in this case, should undertake to reduce the facilities, if absolutely necessary, by a gradual reduction and by a careful study of the result of such reduction.

It must be presumed that a board, like the Railroad Commission, which is required by law to inspect and look after the business of the company and which has no personal interest to serve by such order and which stands

between the public on the one hand and the railroad company on the other, to see that each deals fairly with the other, has reached a right result after it has heard and determined the matter, and it is only in a case where the proof shows, to a reasonable certainty, that they have abused their discretion, that the Court should interfere.

The Supreme Court of Alabama, in the case of **Railroad Commission of Alabama vs. A. G. S. R. R. Co.**, 64 So., 13, in the 9th head note, has well said:

> "It is not the policy of the State to place the safety and convenience of the traveling public solely within the arbitrary control of the railroad companies, but neither is it the policy of the State to give the Railroad Commission an uncontrolled dominion over the railroad companies."

If the railroad companies are left to manage their business exactly as they would like to do, it will be managed solely to the interest of making profit for the stockholders of the company. It must, of necessity, be made to serve the public interest because, in its very nature, it is a monopoly, having the power to build up or destroy, at will, the interest of communities, cities, and even States.

I respectfully submit that on the showing made, the writ of injunction should have been denied, and that the case should be reversed and the bill dismissed.

Respectfully submitted,

GEO. H. ETHRIDGE,

Assistant Attorney General.

James H. Powers.

OF COUNSEL

Office Supreme Court, U. S.
FILED
MAY 18 1916
JAMES D. MAHER
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1915.

MISSISSIPPI RAILROAD COMMISSION AND ROSS A. COLLINS, ATTORNEY GENERAL OF MISSISSIPPI.
Appellants,

vs.

MOBILE & OHIO RAILROAD COMPANY,
Appellee.

No. 653 256

Appeal From The Order of The District Court of The United States For the Southern District of Mississippi, Granting an Interlocutory Injunction.

BRIEF AND ARGUMENT FOR APPELLEE.

S. R. PRINCE,
CARL FOX,
Attorneys for Appellee.

J. E. DUVAL & CO., PRINTERS, MOBILE, ALA.

SUBJECT INDEX.

—o—

I.

	Page
STATEMENT	1-6
FACTS	7-14
BRIEF OF THE ARGUMENT	15-29
I. Jurisdiction of the Court	15-17
II. An Appellate Court will not Reverse the Order of a Lower Court Granting or Refusing an Interlocutory Injunction unless clearly Improvidently Granted	17-18
III. The Law of Mississippi does not Authorize the Railroad Commission of Mississippi to enter the Orders Enjoined, and the Threatened Enforcement of said Orders, with a Heavy Penalty for Failure to Comply, Denied to Appellee the Equal Protection of the Law	18-20
IV. The Orders of the Commission Deprive the Railroad Company of its Property Without Due Process of Law	20-23
V. Do the Orders Directly Interfere with Interstate Commerce?	23-25
VI. The Orders Enjoined Interfere with an Instrument of the United States Government	25-26
VII. Enforcement of the Orders Enjoined would Impair the Obligation of a Contract	26-27
VIII. Is the Present Passenger Service Adequate?	27-29
ARGUMENT AND ANSWER TO APPELLANT'S BRIEF	30-116
I. Jurisdiction of the Court	30-39
II. An Appellate Court will not Reverse the Order of a Lower Court Granting an Interlocutory Injunction Unless Clearly Improvidently Granted	39-44
III. The Law of Mississippi Does not Authorize the Railroad Commission of Mississippi to Enter the Orders Enjoined, and the Threatened Enforcement of said Orders, with a heavy Penalty for Failure to Comply, denied to Appellee the Equal protection of the Law	44-57
IV. The Orders of the Commission Deprive the Railroad Company of its Property without Due Process of Law	57-90
V. Do the Orders Directly Interfere with Interstate Commerce?	91-96

Page

VI. The Orders Interfere with an Instrument of the U. S. Government 96-98

VII. Do the Orders Impair the Obligation of a Contract 98-100

VIII. Is the Present Passenger Service Adequate?..... 101-111

IX. Facts Do not Even Tend to Sustain the Orders for the Six Trains 111-113

Mississippi should not be Allowed to Secure a Preference through the Orders 113-115

Reasons why the Interlocutory Injunction should have been Granted 115-116

Appendix—Alabama Charter of M. & O. R. R. Co.....117-128

Appendix—Mississippi Charter of M. & O. R. R. Co.....129-142

TABLE OF CASES CITED.

Atlantic Coast Line v. North Carolina, 206 U. S. 6, 16, 19, 20, 22-27 .....22, 23, 73, 74, 75, 76, 77, 78, 79, 80, 87, 89, 90.

A. C. L. R. R. Co. vs. Wharton, 207 U. S. 328, 334.....24, 28, 29, 93, 94, 112.

A. & V. R. R. Co. vs. Railroad Commission 38 Sou. 356; 86 Miss. 667..... 47

Cleveland, etc., Ry. Co. v. Illinois, 177 U. S. 514, 518..... 24

Com. v. Fitchburg R. Co., 12 Grey. (Mass) 180..... 27

City Ry. Co. vs. Citizens St. R. R. Co., 166 U. S. 557, 564....18, 40

Duplex Printing Co. v. Campbell, etc., 69 F. R. 250, 252 17, 18, 40, 41.

G. & S. I. R. R. Co. vs. R. R. Com. of Miss., 94 Miss., 124; 49 Sou. Rep. 118.....19, 20, 45, 46, 50, 51, 53.

Goodlett v. L. & N. R. R. Co. 122 U. S. 391..... 16, 38.

I. C. R. R. vs. Adams, 180 U. S. 28, 36, 37,.....15, 31, 32

Interstate Commerce Commision v. Union Pac. R. R., 222 U. S. 541, 546, 549 .....21, 64, 65.

I. C. R. R. Co. v. Dodd, 61 Sou. 743..... 56.

Jack vs. Williams, 113 F. R. 823; 145 F. R. 281.....27, 106, 107, 108, 109, 110.

Kansas vs. Dodge City, M. & T. R. R. Co., 24 L. R. A. 564 ..... 108.

Louisville, etc., Ry. v. Louisville Trust Co., 174 U. S. 552 .....16, 36, 37.

Memphis & Charleston R. R. Co. v. State of Alabama, 107 U. S. 581 38

Minnesota Rate Cases, 230 U. S. 352, 401, 433, 434, 435 21, 59, 60, 61, 92, 93.

PAGE

Minneapolis vs. St. Louis R. Co., 186 U. S. 257, 265, 266 22, 23, 70, 71, 72, 73.
Missouri Pac. Ry. vs. Kansas, 216 U. S. 262, 277-8-9..... 22, 23, 79, 80, 81, 86, 87.
Missouri Pacific Ry. v. Tucker, 230 U. S. 340.....22, 23, 84, 85.
Missouri Pacific Ry. v. Nebraska, 217 U. S. 196, 206.....23, 85, 86.
Mississippi Railroad Commission v. I. C. R. R. Co., 203 U. S. 335, 342, 345..... 24, 28.
McGee v. Mathis 18 L. Ed. 314, 318.....26, 98, 99.
Minneapolis, St. P. & S. S. Marie Ry. Co. vs. Railroad Commssion of Wisconsin, 17 L. R. A., N. S. 821, 832; 116 N. W. 905 .....103, 104.
Morawetz on Private Corporations, 1119..... 109
M. K. & T. R. R. vs. Love, 177 F. R. 494..... 24, 95.
Northern Pacific Ry. vs. North Dakota, 216 U. S. 579 22, 23, 81, 82, 83, 84.
Northern Pac. v. Townsend, 190 U. S. 267..... 16, 32.
Pearsall v. Great Northern Ry., 161 U. S. 646, 661-665 26, 99, 100.
Patch v. Wabash R. R. Co., 207 U. S. 277..... 16, 36.
Railroad Coms. vs. F. L. & T. Co., 116 U. S. 307, 331 334 16, 21, 24, 25, 33, 34, 59, 60, 97.
Rahley vs. Columbia Phonograph Co., 122 F. R. 623, 625 18, 43.
Railroad v. Peniston, 18 Wallace 29; 21 Law Ed. 787, 792 26, 97, 98.
St. Louis & San Francisco Ry. v. James, 161 U. S. 545..... 16, 36.
Southern Railway v. Allison, 190 U. S. 326.....16, 36, 37.
Southern Pacific vs. Earl, 82 F. R. 690, 691, 692.....17, 41, 42, 43.
St. Louis & S. F. Ry. Co. v. Gill, 156 U. S. 649, 657.....21, 58, 59.
Southern Ry. v. St. L. Hay & Grain Co., 214 U. S. 297, 301 21, 65, 66.
State of Iowa v. Old Colony Trust Co., 215 F. R. 307, 312 27, 104, 105, 106.
Stone vs. Yazoo, etc., Co., 62 Miss. 607..... 47.
Stone vs. Natches R. R. Co., 62 Miss. 646..... 47.
State of South Carolina vs. Jack, 145 F. R. 281, 286..... 110.
Siler v. L. & N. R. R. Co, 213 U. S. 175, 194..... 54
Thompson v. Union Pacific Ry. Co., 9 Wallace 579; 19 Law Ed. 792, 798 25
U. S. v. Union Pacific, 98 U. S. 613 .....26, 100.
U. S. vs. B. & O. R. R. Co., 225 U. S. 306, 323.....17, 39, 40.
Wilson v. Shaw, 204 U. S. 24, 33..... 25.
Wisconsin, etc., R. R. Co. v. Jacobson, 179 U. S. 287, 296, 301, 302 .....22, 67, 68, 69, 70.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1915.

MISSISSIPPI RAILROAD COMMISSION AND ROSS A. COLLINS, ATTORNEY GENERAL OF MISSISSIPPI. *Appellants,* *vs.* MOBILE & OHIO RAILROAD COMPANY, *Appellee.*	No. 653 Appeal From The Order of The District Court of The United States For the Southern District of Mississippi, Granting an Interlocutory Injunction.

STATEMENT.

This is a direct appeal to the Supreme Court of the United States under Section 266 of the Judicial Code from an order of Circuit Judges Pardee and Walker and Judge Niles, District Judge of the Southern District of Mississippi, granting to Appellee, Railroad Company, an Interlocutory Injunction in this case against the Mississippi Railroad Commission and the Attorney General of the State of Mississippi, restraining them from enforcing an order made by the Mississippi Railroad Commission requiring the Mobile and Ohio Railroad Company to operate six passenger trains numbered 7, 8, 9, 10, 11 and 12 between points in the State of Mississippi.

The Bill filed by Appellee made the following case:

The Mobile & Ohio Railroad Company, an Alabama corporation, operates an interstate railroad extending from Mobile, Alabama, through the States of Alabama, Mississippi, Tennessee, Kentucky and Illinois, to St. Louis, Missouri. The general business depression due to the European War so reduced the income of the Company that it was compelled to reduce its expenses in order to live. A part of the general program of economy was the discontinuance of four interstate passenger trains which operated partly in the State of Mississippi and two passenger trains which operated entirely within the State of Mississippi. Prior to the discontinuance of said trains, the matter was taken up with the Railroad Commission of Mississippi and explained fully to them, and Appellee thought the Commission approved the plan, although there was no law of Mississippi that required appellee to secure permission of said Commission. The Alabama Commission, into which State four of the trains ran, and to whom the matter was submitted, approved the plan and authorized the withdrawal of the trains. Appellee gave notice to the public that it would discontinue said trains on September 28th, 1914. On September 26th, 1914, the Attorney General of Mississippi secured an injunction against Appellee in the Chancery Court of Lauderdale County, Mississippi. This injunction was dissolved on motion of the Railroad Company on October 5th, and said trains were withdrawn.

The Mississippi Commission cited the Railroad

Company to appear October 7th and show cause why it should not be required to continue to operate the said trains between Corinth, Mississippi and State Line, Mississippi. Appellee appeared before the Commission and all the facts were presented to the Commission and every defense of the Company made plain to it.

On October 7th Appellee had in operation three trains each way daily north of Meridian, Mississippi, and two trains each way daily south of Meridian, Mississippi, and on that date the Commission ordered Appellee to operate, beginning October 10th, in addition to the trains then being operated, two trains each way daily between Meridian, Mississippi and Waynesboro, Mississippi, Waynesboro being a point south of Meridian, Mississippi, and distant fifty-two miles. The four trains thus ordered placed in operation were in lieu of those four trains taken off which had formerly operated between Meridian, Mississippi, through Waynesboro, Mississippi, and through the State of Alabama, to Mobile, Alabama. The said orders of the Commission also directed Appellee to operate an additional train each way running north from Meridian, Mississippi to Okolona, Mississippi. These orders carried a combined penalty, named in the orders, of $3,000.00 per day for violation thereof.

The earnings of the Railroad Company were falling off at the rate of $3,000.00 a day when it was decided to take the trains off, and at the date the Bill was filed, the falling off in revenue of Appellee as compared with the previous year was $10,000.00

per day. The Railroad Company did not earn sufficient money in July, August and September, 1914, over its expenses, to pay its fixed charges and taxes. That on account of the business depression the volume of passenger traffic in the State of Mississippi had materially declined. That no one of said trains which were discontinued paid anything above the cost of operation and maintenance, and on the contrary, the direct cost to Appellee was greater than the income derived therefrom. That said trains were put on at the solicitation of citizens of Mississippi, and while it was known that they did not pay, they were retained while general business was good and Appellee was earning money over all its expenses. That when said trains, which were local trains, were taken off, the trains which were formerly fast through trains were made local trains to take care of the local passenger traffic in the State of Mississippi, and that the train service left on furnished an adequate and reasonable service to the people of Mississippi under the conditions existing at the time. The schedule of each of the trains left on and those taken off was set forth.

That the Railroad Commission of Mississippi had no power under the law of Mississippi to enter an order directing the number of trains to be operated by railroads. That the order was void for unreasonableness and deprived Appellee of its property without due process of law. That to comply with order would force Appellee to discriminate against other localities, contrary to law.

That this Railroad was made by Section 3964

of the Revised Statutes of the United States, a post road and that by an Act of Congress of the United States, approved September 20th, 1850, certain lands were granted the State of Mississippi to aid in the construction of a railroad from Mobile, Alabama, to a point near the mouth of the Ohio River, and by appropriate Acts of the Legislature said lands were granted to Appellee. By Section Four of said Act of Congress Appellee was made a public highway for the use of the United States Government without charge for the transportation of troops and property of the United States, and Appellee was required by said Act of Congress to carry the mails at a reduced price as may be fixed by Congress. That said orders of the Railroad Commission, if enforced, would endanger the life of Appellee as a carrier, by reason of its lack of income to meet its expenses. That the orders were so unreasonable as to endanger the life of the Railroad Company, and were, therefore, a direct burden on this instrument of the United States Government and a direct burden on and interference with interstate commerce.

That if the Commission and Attorney General of Mississippi were not restrained they would file suits against Appellee for violation of the orders of the Commission, which suits would harass and annoy Appellee, and the penalties that might be recovered were so great as to intimidate Appellee. That irreparable loss would result to Appellee unless the enforcement of said orders was restrained. That the orders of the Commission were confiscatory and deprived Appellee of its property without due process

of law, in violation of the Revised Statutes of the United States.

The United States District Court granted a restraining order on the sworn Bill on October 8th, 1914, and after due notice and the filing of numerous affidavits and the hearing personally of witnesses, Circuit Judges Pardee and Walker and District Judge Niles granted the interlocutory injunction prayed for, from which decree this appeal is prosecuted.

FACTS.

The facts as shown by the record are:

The Mobile & Ohio Railroad earned only $85,000.00 net revenue during the year ending June 30th, 1914. It had that much left after paying cost of operation, fixed charges, and taxes and before making any allowance for a dividend, or in any way providing for betterments and improvements to the property. (Rec. p. 55). The affairs of Appellee have been economically managed, and the present condition is not due to wastefulness or extravagance, but to the lack of business. This Appellee has never paid excessive dividends. The greatest in its history being five per cent. The stocks and bonds of the Company represent value received and the Company does not pay fixed charges on any fictitious indebtedness or watered securities of any kind. (Rec. p. 62).

August 2nd, 1914, the European War began, which caused a general business depression, particularly in the cotton territory served by Appellee (Rec. p. 56). The backbone of this Company's traffic is lumber and cotton, and the resulting movement of general freight due to these two commodities being marketed at a profit. In former years, the month of October was the heaviest cotton moving month. This year there is practically no cotton moving at all. The price is exceedingly low, and even at the low price, there is no market. The price of lumber

is very low and the market is demoralized to such an extent that it is not moving in any volume (Rec. p. 62).

The results of operation for July, 1914, showed a surplus of $11,000.00 over fixed charges and taxes and for August, 1914, a deficit after allowing for fixed charges and taxes, of $25,641.00; a deficit for September, 1914, of $113,627.00 (Rec. p. 67). Daily reports showed such a falling off of revenue that there was imperative need for immediate retrenchment (Rec. p. 56). The revenue of the Company was falling off in the State of Mississippi, as well as in the other states, at the rate of $10,000.00 per day, as compared with similar periods in former years (Rec. pp. 59, 62). The cash statement for September 30th, 1914, showed that the Treasurer had cash on hand $75,885.00 and had on hand audited approved vouchers awaiting payment aggregating $1,027,000.-00 (Rec. pp. 59, 74).

The Management of Appellee Company determined upon many economies. It took off traveling firemen, tie inspectors, car tracers, inspectors of agencies, relief agents, General Storekeeper's forces, clerks in various offices, yard masters and their clerks. It reduced repairs to locomotives and passenger train car repairs. It reduced coal chute labor and repairs to equipment. Telegraph operators were discharged. It reduced the Maintenance of Road Department and it closed certain shops. Among the first reductions was a material reduction in the pay of all general officers. The President of the Company, of his own initiative, reduced his sala-

ry twenty per cent. The Vice-President, of his own initiative, reduced his salary twenty per cent. The salary of all other officers has been reduced on a sliding scale up to ten per cent (Rec. p. 57).

As the tonnage decreased, the freight traffic expenses automatically reduced themselves to fit the lesser volume of business, but with passenger train service, trains have to be run without regard to the volume or number of passengers handled in each, consequently, if there is to be reduction in passenger expenses, it must be by reducing the number of trains operated (Rec. p. 56). Passenger trains Nos. 7, 8, 9, and 10 which ran between Mobile, Alabama, and Meridian, Mississippi. were discontinued and passenger trains Nos. 11 and 12, which run between Meridian, Mississippi and Okolona, Mississippi, were discontiued, and when those trains were taken off, the trains numbered 1, 2, 3, and 4, which at that time were fast trains and made few stops, were made local trains, and stopped at all points. Except one train, which did not stop at a place called Basic City and a place called Okatibbee, which places are not incorporated towns and have not any passenger business to amount to anything. To explain, formerly train No. 4, which is a north-bound train, made seven stops between Meridian, Mississippi and Okolona, Mississippi, and under the new schedule, it makes twenty-two stops. The other through trains were changed in the same way (Rec. p. 61).

These trains were not taken off to make up any loss being sustained on the business of the Company as a whole. They were taken off because they did not

themselves pay the cost of operation, and because due to the falling off of the business of the Company, as a whole, there was no general revenue out of which this Company could, during the depression, make up the deficit of these trains, as it had in the past (Rec. pp. 61, 62).

The earnings of trains 7, 8, 9, 10, 11 and 12 for the months of July, August and September, 1914, showed a revenue per train mile for July of 65c, for August of 64c, for September 56c. For the first five days in October, during which trains 7, 8, 9, and 10 were run, the passenger revenue per train mile of those trains between Meridian, Mississippi, and Waynesboro, Mississippi, was 36c. The passenger revenue per train mile of trains 11 and 12 for the first five days of October, 1914, between Meridian, Mississippi and Okolona, Mississippi, was 25c (Rec. pp. 68, 71).

The cost per passenger train mile of operating said trains was approximately $1.00 (Rec. pp. 60, 72, 115). The actual out-of-pocket cost of operating said trains 7, 8, 9, and 10, between Meridian, Mississippi and Waynesboro, Mississippi was 36.3c per train mile. (Rec. p. 66). Appellant's witnesses placed this direct cost at 25.54c per train mile. Out-of-pocket cost is defined by witnesses to mean the pay of employees on the train and fuel and supplies used on the train. It does not include any maintainance of way and structures or the wear and tear on the track or buildings; does not include the repair of the equipment used in said trains or any portion of the cost of dispatching said trains, or any portion

of the wages of station employees or any charge for damage to live stock, nor any proportion of traffic or general expenses, or advertising, etc., with all of which it should be charged its pro-rata. Rec. p. 67).

The Alabama Commission, through which State four of said trains ran, permitted the withdrawal thereof. (Rec. p. 58). No complaint was received from the States of Tennessee, Kentucky or Illinois. No discrimination against the State of Mississippi. The passenger service now provided for the State of Mississippi is the maximum service given any State through which this line runs. Mississippi has a better service than Alabama, part of Tennessee, Kentucky and part of Illinois, notwithstanding the density of population in the State of Illinois through which this road operates is 106.82 persons per square mile; Alabama 44.25, Tennessee 54.09, Kentucky 58.05, as against 41.02 in the State of Mississippi. (Rec. p. 58).

There are five towns and five small villages between Meridian, Mississippi, and Waynesboro, Mississippi, including Waynesboro. The total population of all these places and towns, according to the 1910 census of the United States, is 5,456 people. No town other than Meridian, Mississippi, has complained against the withdrawal of the trains. Sixty-one affidavits from practically all of the business men in said towns state that they do not think the taking off of the trains will materially injure the business of those towns, and they think the Railroad Company ought to be allowed to take them off, if they were

not paying. That due to the low price of cotton, the people are not traveling (Rec. pp. 75, 76).

The direct and immediate saving to Appellee by taking off of the trains was a reduction in its expenses of $10,000.00 per month (Rec. p. 59). The trains operated furnish adequate accommodation for the number of persons traveling (Rec. p. 75).

Meridian, Mississippi, is next in importance to St. Louis and Mobile. There is not much difference in size between Meridian, Mississippi and Jackson, Tennessee, and Cairo, Illinois. Meridian has better passenger train facilities at this time than has Mobile or Cairo (Rec. p. 65).

The order of the Railroad Commission directing that certain of these trains be operated between Meridian and Waynesboro, Mississippi, is unbusinesslike and will cost this Company even proportionately more per mile than the ordinary operation of said trains under the old schedule, because the distance between these two points is fifty-two miles and even if the trains made a turn-around trip they would only travel 104 miles per day and the contracts that this Company has with its employes provides a minimum mileage per day and per trip, which minimum has to be paid for, regardless of the miles traveled, and is considerably in excess of the round trip mileage between Meridian and Waynesboro (Rec. pp. 63, 64).

There are no facilities at the State lines between Mississippi and Alabama and between Mississippi and Tennessee for turning passenger trains

and to provide them would cost a large amount of money. (Rec. p. 64).

The Mobile & Ohio Railroad Company is what is known as a "land-grant railroad" and it has contracts for the carriage of mail with the United States Government. (Rec. p. 64).

If this Company is required to reinstate the trains in Mississippi, there are more traffic reasons and business reasons why the trains should be reinstated in other states. If required to reinstate these trains in Mississippi, since the curtailment has to be made and expenses reduced, the economies necessary thereto will have to be placed as a burden on the traffic and operations generally or in some other State (Rec. p. 64).

This Company would have been justified, according to the earnings of these trains, in taking them off prior to the general business depression felt by this Company along with other businesses generally, because we gave the trains a fair and honest trial for many months and they did not pay (Rec. p. 61).

Passengers could formerly leave Meridian for points south thereof to Mobile at the following hours: 3:10 A. M., 7 A. M. 1:55 P. M., and 4:00 P. M. Under the present schedule, they can leave at 3:10 A. M., and 2:43 P. M., (Rec. p. 23).

Passengers from the South under the former schedule would arrive at Meridian at 12:20 A. M., 11:00 A. M., 2:50 P. M. and 9:10 P. M. Under the present schedule, they arrive at Meridian from the south at 12:35 A. M. and 1:45 P. M., (Rec. p. 24).

North from Meridian, Mississippi, passengers

could leave Meridian formerly at 12:30 A. M., 8:00 A. M., 2:55 P. M. and 4:00 P. M. They can now leave at 12:45 A. M., 8:00 A. M. and 1:55 P. M. (Rec. p. 28).

Coming to Meridian from the north, they formerly arrived at Meridian at 2:55 A. M., 10:50 A. M., 1:50 P. M. and 8:00 P. M. They can now arrive at 3:00 A. M., 2:33 P. M. and 8:00 P. M., (Rec. p. 26).

There is a conflict in the facts on the question of the need of additional train service. Traveling salesmen testified that the schedule was inconvenient and under it they could not work as many towns, and lost a great deal of sleep. There was no testimony to show any need of restoring, or any inconvenience caused by the withdrawal of trains 11 and 12, and nearly all of Appellant's witnesses agreed that one additional train each way south of Meridian, Mississippi, would be sufficient, in their opinion.

The Commission stated that it thought one additional train would earn more than 40c per train mile. The Commission by its Chairman testified that it did not think the M. & O. should be required to run a passenger train if it did not pay operating expenses. In answer to the Court's question if he meant by "operating expenses" the pay of train employees and the cost of oil and supplies on the train only, he answered "Yes sir". The Court then said "Just the actual cost of operating?" The answer was "Yes sir, that is my view of it." (Rec. p. 130). Appellant introduced no witness from any town except Meridian, Mississippi.

BRIEF OF THE ARGUMENT.

I

Jurisdiction of the Court.

1. The matter in controversy exceeds, exclusive of interest and costs, the sum or value of three thousand dollars, and

(a) The orders of the Commission enjoined deny to Appellee the equal protection of the laws and deprive Appellee of its property without due process of law contrary to the Fourteenth Amendment to the Constitution of the United States;

(b) The said orders amount to a regulation of and are a direct interference with Interstate Commerce;

(c) The orders of the Commission impair the obligation of a contract, contrary to Article X of the Constitution, in that said orders will jeopardize the continued operation of Appellee's road to carry the United States' mails and troops, which the contract, created by the grant of lands by the United States on that condition accepted by the State, obligated Appellee to do.

These several claims of violation of Appellee's constitutional rights being made in good faith and not frivolously, the Court had jurisdiction irrespective of citizenship of parties.

I. C. R. R. vs. Adams, 180 U. S. 28, at pp. 36, 37.

The claim being that the said Orders of the Commission jeopardize the continued operation of Appellee's line as carrier of the United States mail and as a post road, and that the Acts of Congress referred to made a contract, the determination of that question depends upon the construction of the Acts of Congress and involves a Federal question.

Northern Pac. v. Townsend, 190 U. S. 267.

2. Diverse citizenship of the parties:

The jurisdiction of the Court does not depend solely on the diverse citizenship of the parties. This is a question of law. The Acts of Alabama and Mississippi constituting the Charter of Appellee are set forth in the Appendix to this brief.

The case of *Railroad Commission v. F. L. & T. Co.,* 116 U. S. 307, does not hold that the M. & O. R. R. Co. is a citizen of the State of Mississippi in the sense that the word "citizen" is used with relation to the Federal Judiciary.

The fact of prior incorporation in Alabama is controlling insofar as the jurisdiction of the Federal Court is concerned.

Goodlett v. Louisville & Nashville R. R. Co., 122 U. S. 391.

St. Louis & San Francisco Ry. v. James, 161 U. S. 545;

Louisville, etc., Ry. v. Louisville Trust Co. 174 U. S. 552;

Southern Railway v. Allison, 190 U. S. 326;

Patch v. Wabash R. R. Co., 207 U. S. 277.

Aside from the indisputable legal presumption that a state corporation when suing in United States Courts is composed of citizens of the State which created it, in this case the State of Mississippi did not attempt to constitute any association of natural persons a corporation, but conferred certain powers on the already incorporated Alabama corporation.

Appellant made no point in argument or in Brief against the jurisdiction of the Court.

II.

An Appellate Court will not Reverse the Order of a Lower Court Granting or Refusing an Interlocutory Injunction unless clearly Improvidently Granted.

The Appellate Court in passing on an order granting a preliminary injunction does so from the standpoint of the Court granting the injunction.

> *U. S. vs. B. & O. R. R. Co.*, 225 U. S., 306 at p. 323.

The granting of the preliminary injunction was the exercise of sound judicial discretion and the Court's action should not be disturbed unless improvidently exercised.

> *Duplex Printing Co. v. Campbell, etc.*, 69 F. R. 250, at p. 252;
> *Southern Pac. vs. Earl*, 82 F. R. 690, at pp. 691, 692.

The granting of a preliminary injunction does not determine the merits, and on a motion to dis-

miss, and an appeal from an Order refusing, the Appellate Court will not go into the question of whether the State has or has not impaired the obligation of a contract, nor will it go into the merits of the case further than to be able to say whether the Court has improvidently exercised its discretion.

City Ry. Co. vs. Citizens St. R. R. Co., 166 U. S. 557, at p. 564;
Rahley vs. Columbia Phonograph Co., 122 F. R., 623, at p. 625.

The obvious purpose of Congress in requiring in Section 266 of the Judicial Code notice to the opposite side and action by three United States Judges on an application for an injunction in a case of this kind was to prevent hasty, ill-advised action and when an injunction is secured under Section 266 of the Judicial Code the exercise of the discretion of three Judges should be given even greater weight.

III.

The Law of Mississippi does not Authorize the Railroad Commission of Mississippi to enter the Orders Enjoined, and the Threatened Enforcement of said Orders, with a Heavy Penalty for Failure to Comply, Denied to Appellee the Equal Protection of the Law.

It is a denial of equal protection of the laws and a deprivation of property without due process of law if these orders require the Railroad Company

to do an act not required of the Railroad Company by any law, or any valid order under any constitutional law.

Appellee, Railroad Company, denies that the Railroad Commission of Mississippi has the power to order it to put into operation the said trains.

The Railroad Commission is the administrative board, so to speak, of the Legislature, and can only exercise the specific statutory authority given it.

There is no statute of Mississippi giving the Railroad Commission general supervision over railroad companies.

> *G. & S. I. R. R. Co. vs. R. R. Com. of Miss.*, 94 Miss., 124.

Section 4849 of Mississippi Code of 1906 (App. Brief p. 10) does not confer power on the Railroad Commission to require operation of six additional trains. The statute gives to the Commission the right to hear and determine "all complaints made of any time schedules * * * on the ground that the same, in any respect, is, in the case of time schedule, unnecessarily inconvenient for the public." This means the Commission may rearrange the arrival and departure time of trains. The Mississippi Supreme Court in the *G. & S. I. Case, supra,* said as to the meaning of Section 4849:

> "In our opinion the authority to determine complaints made of any time schedules * * * conferred upon the Commission authority only

to regulate the time at which any train should arrive and depart from any regular stopping place, etc."

The orders should not be enforced against Appellee for the further reason that Section 4849 of the Mississippi Code provides that the Commission shall docket and hear all *complaints,* and the complaint must be in writing and the Commission *shall* furnish the railroad with a copy thereof. In this case there was no complaint, and if there was Appellee was served with no copy thereof.

IV.

The Orders of the Commission Deprive the Railroad Company of its Property Without Due Process of Law.

The orders deprive Appellee of its property without due process of law in that they compel the operation of six trains no one of which pays its full cost of operation.

The service rendered is a part of the rate. If it is illegal to lower the rate and thus take the property of the carrier it must be illegal to maintain the rate and require such additional service as would take the property of the carrier.

The constitutional guaranty to the Railroad Company is to receive just compensation for the service given the public.

The Railroad Commission Case, 116 U. S. 307, at p. 331;

St. L. & S. F. Ry. Co. v. Gill, 156 U. S. 649, at p. 657;
Minnesota Rate Cases, 230 U. S. 352, at p. 433.

The carrier is entitled to a fair return on a reasonable value. The State cannot justify unreasonably low state rates on the ground of large profits on its interstate business.

230 U. S., *supra*, pp. 434, 435.

The showing made that no one of the trains ordered operated paid its cost of operation, and the showing made that by taking off the said trains Appellee saved $10,000.00 per month, is proof sufficient of a taking of Appellee's property without due process of law.

"* * * If the carriers total income enables it to declare a dividend that would not justify an order requiring it to haul one class of goods for nothing or for less than a reasonable rate."

Interstate Commerce Commission v. Union Pac. R. R., 222 U. S. 541, at pp. 546, 549.

The Carrier is entitled to receive some compensation beyond the mere cost of that which it does.

Southern Ry. v. St. L. Hay & Grain Co., 214 U. S. 297, at p. 301.

If the fact had been that the freight business of

the Mobile & Ohio Railroad Company in the State of Mississippi had been conducted at a profit, that would not justify installation of additional passenger train service at a material loss; otherwise shippers of freight would pay not only the cost of carrying their freight and a reasonable profit thereon, but would be required to make up the deficit in the operation of the said passenger trains.

If a state law requires the installation of a small physical facility, or the operation of a single train, and the proof is that the expense to the carrier is, comparatively speaking, small or trivial when weighed against a great public interest or an admittedly needed convenience to many people, then this Court will not hold that such small expense, or proof that some loss will result, in and of itself and by itself amounts to a taking of property without due process of law, provided the carrier at the time is earning a fair return upon its entire business.

Wisconsin, etc., R. R. Co. v. Jacobson, 179 U. S. 287, at pp. 296, 301, 302;

Minneapolis vs. St. Louis R. Co., 186 U. S. 257, at pp. 265, 266;

Atlantic Coast Line v. North Carolina, 206 U. S. 6, at pp. 16, 19, 20, 22,-27;

Missouri Pac. Ry. vs. Kansas, 216 U. S. 262, at pp. 277-8-9;

Northern Pacific Ry. v. North Dakota, 216 U. S. 579;

Missouri Pacific Ry. v. Tucker, 230 U. S. 340;

Missouri Pacific Ry. v. Nebraska, 217 U. S. 196.

No one of the cases cited is authority for sustaining an order of a state commission which causes the carrier substantial and heavy loss to supply a disputed need (not a primal duty), to a few people. This is submitted as a correct interpretation of this Court's decisions. Go one step further—if the service described is ordered at a time of general business depression and financial emergency to the carrier when it is not earning its fixed charges and taxes, to say nothing of a fair return on its entire business, and you have the instant case; and to say that any warrant is found in this Court's decisions upholding such action is an error.

V.

Do the Orders Directly Interfere with Interstate Commerce?

Appellee is an interstate road, under one management, with one treasury. The right in Mississippi to prevent discrimination against Mississippi does not confer power on Mississippi to require a preference over other states served. Appellee's duty is to several sovereignties and to the general government.

The Bill alleges a heavy loss if the trains are operated; that the earnings will not stand the loss and to force it to operate the trains at a loss will jeopardize its whole operations. If correct, there

cannot be more direct interference with interstate commerce, or a greater burden put upon it.

One test of whether an order is void as a direct regulation of interstate commerce is by "considering the nature of the order, the character of the interstate commerce trains to which it applies, and its necessary and direct effect upon the operation of such train."

> *A. C. L. R. R. Co. vs. Wharton,* 207 U. S. 328, at p. 334.

If the effect of the order is only an incidental interference with interstate commerce it does not violate the constitution, but if direct and material it is an improper exercise of the police power.

> *Mississippi Railroad Commission v. I. C. R. R. Co.,* 203 U. S. 335, at p. 342.

Any order of a state commission which impairs the usefulness of facilities for interstate traffic is a burden on interstate commerce.

> *Railroad Commission Cases,* 116 U. S. 307, at p. 334.

The special insistence of the officers of one state should not be allowed to cast an undue burden on the others.

> *Cleveland etc., Ry., v. Illinois,* 177 U. S. 514 at p. 518.
> *M. K. & T. R. R. vs. Love,* 177 F. R. 494.

If the burden is real and sufficient, substantial and not incidental, it is none the less violative of the Constitution, because on the income instead of being a physical interference. The result is the same.

VI.

The Orders Enjoined Interfere with an Instrument of the United States Government.

Congress may make or authorize contracts with corporations for services to the Government, and may grant aid by land in preparation for and in the performance of such service.

> *Wilson v. Shaw* 204 U. S. 24, at p. 33;
> *Thompson v. Union Pacific Ry. Co.*, 9 Wallace 579; 19 Law Ed. 792, at p. 798.

Section 3964 of the United States Revised Statutes constitutes this railroad, with other railroads, a post road. By Act of Congress approved September 20th, 1850, certain lands were granted in trust to the State of Mississippi to aid in the construction of a railroad from Mobile, Alabama, to a point near the mouth of the Ohio River. By Section 4 of said Act of Congress the road constructed under the Act was made a public highway for the use of the United States Government. The State of Mississippi granted such lands to Appellee by appropriate act.

This Railroad being an instrumentality of the United States in the performance of its duties as a post road, any burden imposed thereon by a state

which would hinder the performance of the duty, is beyond the power of the state.

Railroad v. Peniston, 18 Wallace 29; 21 Law Ed. 787, at p. 792.

VII.

Enforcement of the Orders Enjoined Would Impair the Obligation of a Contract.

The United States Government granted to the State of Mississippi a large acreage of land to aid in the construction of a railroad. The State of Mississippi granted the land to the Mobile & Ohio Railroad Company. One of the obligations of the grant was that the railroad should be a public highway for the use of the United States Government without charge for the transportation of troops, etc.

That this grant by the United States to the State upon conditions and the acceptance of this grant by the State constituted a contract.

McGee v. Mathis, 18 L. Ed. 314 at p. 318.
U. S. v. Union Pacific, 98 U. S., 613.
Pearsall v. Great Northern Ry. 161 U. S., 646, at pp. 661-665.

The orders of the Commission enjoined are so unreasonable and arbitrary under the facts shown in the record, as to cause such a loss as would render doubtful the continued operation of the whole line, and result in its inability to continue to perform its

obligations assumed under the contract set forth above.

VIII.

Is the Present Passenger Service Adequate?

There is a general duty upon a railroad company, chartered to do a passenger business, to receive and carry passengers, that is a primal duty. If that duty is met and the question is one of an additional passenger train for the convenience of the public, the problem is, how many people have to demand the right to the convenience or the right to ride on the additional train before there is a legal duty on the carrier to install the train? The duty varies with circumstances, and what is adequate must be ascertained from the situation, not only of the citizens but of the carrier.

The facts, properly analyzed, disclose no conflict on the point that all of the said trains failed to pay their actual cost of operation.

The best and only reliable test of the need of an additional passenger train facility is whether or not a sufficient number of people claim the right to use the train as will, at the statutory rate, pay the cost of operation thereof and a reasonable profit.

Com. v. Fitchburg R. Co., 12 Grey (Mass.), 180.

State of Iowa v. Old Colony Trust Co., 215 F. R. 307, at p. 312.

Jack v. Williams, 113 F. R., 823; 145 F. R. 281.

The duty owed by the Railroad is to the public and an individual has no right to demand that a train be run to suit his convenience. The individual secures whatever right he has by virtue of being one of the public or community, and the duty to the community does not arise until a sufficient number of people therein demand the right to ride, to create the duty, and that number must at least be such as will at the lawful rate pay the cost of operation of the train.

An examination of the facts upon which the order of the state commission is based being necessary to determine whether or not there has been an unconstitutional exercise of power, the Courts will examine the facts.

> *Mississippi Railroad Commission v. Illinois Central Railroad Company,* 203 U. S. 335, at p. 345;
> *A. C. L. R. R. v. Wharton,* 207 U. S. 328, at p. 334.

To permit one state to determine the adequacy of service, regardless of the rights of citizens of other states is an error. Adequacy under the facts of this case should be viewed from the standpoint of the duty the carrier owed to all of the states served by it.

When, as here, there is a conflict among the people at interest, the citizens of one city, Meridian, Mississippi, testifying to the inconveniences of travel (in one direction only), and the citizens of all other

towns served testifying that the present service was adequate, due to the small number of people now travelling because of lack of money; it appears that the weight of outside opinion evidence is an offset and if you add to that the positive evidence of the railroad that very few passengers ride on the said trains ordered operated, and the certain proof of loss from their operation, there seems no reasonable ground for holding the present service inadequate, especially under the financial circumstances detailed.

ARGUMENT AND ANSWER TO APPELLANT'S BRIEF.

I.

Jurisdiction of the Court.

The Bill alleges that the matter in controversy exceeds, exclusive of interest and costs, the sum or value of Three Thousand Dollars. The further averment is that if the orders are not enjoined the total penalties per day for a violation thereof would be Three Thousand Dollars. The further averment is that the orders of the Mississippi Railroad Commission would require plaintiff to run the said trains at the cost to plaintiff of the many thousand dollars which it would be required to expend without any return. In addition to these averments of the bill, which the decisions plainly hold to be sufficient, the value of the matter in dispute has been further detailed and proven by the affidavits in support of the bill, which show that the direct saving per month to the Railroad Company by taking off said trains is Ten Thousand Dollars per month. The averments of the bill are that Appellant is duly organized under the laws of the State of Mississippi and Appellee is a corporation organized and existing under the laws of the State of Alabama.

The suit arises under the Constitution and the Laws of the United States in the following particulars:

(1) The orders of the Commission deny to plaintiff the equal protection of the laws, contrary

to the Fourteenth Amendment to the Constitution of the United States;

(2) The orders of the Commission deprive plaintiff of its property without due process of law, contrary to the Fourteenth Amendment to the Constitution of the United States;

(3) The orders of the Commission are a didect interference with interstate commerce and amount to a regulation of such commerce, contrary to the power given to Congress to regulate commerce among the several states;

(4) The orders of the Commission impair the obligation of a contract, contrary to Article X of the Constitution, in that said orders will jeopardize the continued operation of Appellee's road to carry the United States' mails and troops, which the contract, created by the grant of lands by the United States on that condition accepted by the State, obligated Appellee to do.

The orders of the Commission also jeopardize the life of Appellee, and thus would destroy Appellee as a post road contrary to Section 3964 of the Revised Statutes of the United States, creating Appellee a post-road.

In *Illinois Central Railroad Co. vs. Adams,* 180 U. S. Rep. 28, at pp. 36 and 37, the Court said:

> "The bill clearly avers a case arising under the Constitution of the United States, and is one of which the Circuit Court would have jurisdiction irrespective of the citizenship of the parties. As we had occasion to observe in City

> Railway Company vs. Citizens' Street Railroad Company, 166 U. S. 557, 564, 'whether the State had or had not impaired the obligation of this contract was not a question which could properly be passed upon, on a motion to dismiss so long as the complainant claimed in its bill that it had that effect, and such claim was apparently made in good faith and was not a frivolous one.' See also New Orleans vs. New Orleans Water Works Company, 142 U. S. 79, 88."

In the case of *Northern Pacific Railway Company vs. Townsend,* 190 U. S. 267, the facts were that the United States had granted a right of way by a statute to a railroad, and there was claim by homesteaders of adverse possession against the railroad.

The Court said:

> "Conceding the adverse possession and its efficacy under the state law as against the railroad right of way, to be as found by the court, the sole question which arises then for decision is whether, in view of the provisions of the act of Congress to which we have referred, an asserted title by adverse possession can be made efficacious as respects the property in controversy. And depending, as this question does, upon the nature and effect of the acts of Congress, its solution necessarily involves a Federal question." p. 270.

On The Question Of Citizenship:

Inasmuch as the jurisdiction in this case does not rest solely on citizenship of the parties only

brief reference will be made to the decisions.

Appellant, on page 13 of its brief, referred to the case of Railroad Commission v. Farmers Loan & Trust Company, 116 U. S. 307, and said:

> "It was adjudicated in that case that the Mobile & Ohio Railroad Company was for purposes of operation and control a Mississippi corporation, insofar as its line and business in Mississippi were concerned."

If Counsel intended by this reference to claim that this Court had held that the Mobile & Ohio Railroad Company was a citizen of Mississippi in such a sense as not to make a controversy between that Railroad Company and a citizen of Mississippi a controversy between citizens of different states within the meaning of the Act of Congress conferring jurisdiction on District Courts of the United States, and permitting removal of cases to the courts of the United States, then it is submitted that the Railroad Commission Cases do not sustain the point.

Appellant sets out the pertinent paragraphs of said decision in its brief on pages 13 and 14. The Court, it is submitted, held that the corporation created by each state is for all the purposes of local government a domestic corporation and its railroad within the State is a matter of domestic concern. It then said:

> "Every person, every corporation everything within the territorial limits of a State is while there subject to the constitutional authori-

> ty of the State government. Clearly under this rule Mississippi may govern this corporation, as it does all domestic corporations, in respect to every act and everything within the State which is the lawful subject of State Government."

The Court then went on to hold that the State could regulate freights and fares exclusively within the State, and prevent the Company discriminating against persons and places within Mississippi, and make needful police regulations, etc. This Court, we respectfully submit, did not hold that the Mobile & Ohio Railroad Company was a citizen of Mississippi in the sense that the words "citizen" and "citizenship" are used with relation to the Federal Judiciary.

If the Court in the above case had meant to hold that the Railroad Company was a domestic corporation in Mississippi, then it is not understood why it should specifically point out that with reference to the government of such corporation in certain particulars, the State might govern it "as it does all domestic corporations." Concededly the State has the power to control a foreign railroad corporation within its boundaries in the particulars set forth just as it may a domestic corporation, and this Court held nothing more in the case referred to.

The Mobile & Ohio Railroad Company was chartered by Act of the Alabama Legislature February 3rd, 1848, Acts of Alabama of 1848, page 225, (Appendix p. 117). That Act set forth the names of the incorporators, the amount of capital stock,

powers of the corporation, etc. The Mississippi Legislature, by an Act approved February 17th, 1848, found in the Laws of Mississippi of 1848, page 83, (Appendix p. 131) enacted in part as follows:

> "WHEREAS, the State of Alabama, by an act approved 3rd February, A. D. 1848, enacted as follows: (here is set out in full the Alabama Act).
>
> AND WHEREAS, the State of Mississippi is desirous to aid in accomplishing the objects of the said act, therefore,
>
> SECTION 1. *Be it enacted by the Legislature of the State of Mississippi,* That the Railroad described in the above recited act be extended in the State of Mississippi from the Alabama line to the State of Tennessee, in such a direction and on such a route as shall be deemed most expedient; and that as to said extension, there is granted to the said Mobile and Ohio Railroad Company, when organized, the same rights, powers, and privileges as are granted to it within the State of Alabama by the same act, subject, however, to the same and similar conditions, restrictions, modifications, and provisions as are in said act above recited, contained, and set forth, excepting the provision contained in section 15, of said act; and the said act is hereby concurred in and adopted within the State of Mississippi, in reference to the said railroad as extended, and in reference to the said Mobile and Ohio Railroad Company, with the exception of that portion contained in Section 15 as before stated."

Appellee refers to the following cases:

St. Louis & San Francisco Ry v. James, 161 U. S. 545;
Louisville, etc., Ry v. Louisville Trust Company, 174 U. S. 552;
Southern Railway v. Allison, 190 U. S. 326;
Patch v. Wabash R. R. Co., 207 U. S. 277.

The foregoing decisions clearly hold that natural persons being created a corporation in one State and such corporation being thereafter created a corporation of another State, either by special Act or in obedience to a general law, remains for the purposes of jurisdiction of the Courts of the United States a citizen of the State by which it was originally created.

In the *James* case, 161 U. S. 545, after referring to a number of cases, the court said: (pp. 562, 563)

> "To fully reconcile all expressions used in these cases would be no easy task, but we think the following propositions may be fairly deduced from them: There is an indisputable legal presumption that a state corporation, when sued or suing in a Circuit Court of the United States, is composed of citizens of the State which created it, and hence such a corporation is itself deemed to come within that provision of the Constitution of the United States which confers jurisdiction upon the Federal courts in "controversies between citizens of different States."

This Court in the case of *Southern Railway v.*

Allison, quoted with approval from the *Louisville Trust Co[illegible]ny* case, as follows:

> "a decision of the question whether the plaintiff was or was not a corporation of Kentucky does not appear to this court to be required for the disposition of this case, either as to the jurisdiction, or as to the merits. As to the jurisdiction, it being clear that the plaintiff was first created a corporation of the State of Indiana, even if it was afterwards created a corporation of the State of Kentucky also, it was and remained, for the purposes of the jurisdiction of the courts of the United States, a citizen of Indiana, the State by which it was originally created. It could neither have brought suit as a corporation of both states against a corporation or other citizen of either State, nor could it have sued or been sued as a corporation of Kentucky, in any court of the United States."

The Court also, in the *Allison Case,* set forth the particular facts with reference to the charter of the Memphis & Charleston Railway, which led the Court in that case to hold the Memphis & Charleston Railway to be an Alabama Corporation, and said in conclusion:

> "The difference between the above case and the cases we have already referred to is plain and fundamental, but in any event we regard the James case, reaffirmed and approved as it is by that of *Louisville &c. Railway v. Trust Company,* 174 U. S. supra, as decisive of the case before us."

The Legislature of Mississippi could have, if it had so desired, created a corporation in the State of Mississippi. Instead of doing that, it very clearly conferred powers upon "The said Mobile & Ohio Railroad Company," the Alabama corporation. It did not constitute any association of natural persons a corporation and confer powers upon them. It did not provide separate stock. It did not require stock books to be opened in the State of Mississippi, nor did it require elections to be held in the State of Mississippi, as was the case with the Memphis & Charleston Railway Company charter, set forth in the case of *Memphis & Charleston R. R. Co. vs. State of Alabama,* 107 U. S. 581.

Aside, however, from the above cases laying down the general rule, we submit that the case of *Goodlett v. Louisville & Nashville Railroad Co.,* 122 U. S. 391, is in every respect similar to the case at bar, upon this question of jurisdiction. If the Court will examine the language of the Tennessee statute therein quoted, in reference to the Louisville & Nashville Railroad Company, a corporation first created by the State of Kentucky, it will find it to be entirely similar to the language used in the statute of Mississippi in reference to the Mobile & Ohio Railroad Company, a corporation created by the State of Alabama. In the Goodlett case it was decided that the Tennessee act was a license granted to a Kentucky corporation; so, in the case at bar, the State of Mississippi intended simply to grant a

license to the Mobile & Ohio Railroad Company, a corporation of the State of Alabama.

II.

An Appellate Court will not Reverse the Order of a Lower Court Granting an Interlocutory Injunction Unless Clearly Improvidently Granted.

This is an appeal from a decree of three United States Judges granting Appellee's application for an interlocutory injunction, and this court will, as a court of appeals, not reverse, unless on the record it is thought the injunction was improvidently granted. The Appellate Court in passing on an order granting a preliminary injunction, does so from the standpoint of the court granting the injunction.

The Supreme Court of the United States, in the case of *United States et al. v. B. & O. R. R. Co.*, 225 U. S., 306, which was an appeal from the granting of a motion for a temporary injunction by the Commerce Court, employed this language:

> "Under the general principles of equity, where a court is called upon to decide whether it will allow a preliminary or pendente lite injunction the duty arising requires it to be determined whether on the face of the papers presented there is such an equitable cause of action presented as justifies the issue of a preliminary injunction to preserve the status pending the suit, that is, to afford an opportunity for a trial of the issues presented. Necessarily it is true also that where an appeal is allowed from an

order granting a preliminary injunction the reviewing court is put to the duty of determining whether on the face of the papers the court below erred as a matter of law in granting the preliminary injunction." p. 323.

In the case of *City Ry. Co. v. Citizens Ry. Co.*, 166 U. S. 557, there was a bill filed in equity to enjoin the City Railway Company, one of the grounds being the impairment of a contract in violation of the Constitution of the United States. A motion was made to dismiss the bill. This court, in its opinion in that case on this point, said:

> "Whether the State had or had not impaired the obligation of this contract was not a question which could be properly passed upon, on motion to dismiss, so long as the complainant claimed in its bill that it had that effect, and such claim was apparently made in good faith, and was not a frivolous one. New Orleans v. New Orleans Water Co., 142 U. S. 79, 88." p. 564.

The rule as stated by Judge Taft in the case of *Duplex Printing Press Co. v. Campbell Printing Press & Manufacturing Co.*, 69 F. R., 250, at p. 252, is as follows:

> "The motion for a preliminary injunction necessarily involved the exercise by him of a sound judicial discretion in granting or withholding it. By no action of his could he enable this court finally to determine all the questions between the parties to the action, because it is

not within the proper province of this court to do so on an appeal from an order granting a preliminary injunction. This is settled by the decision in Blount v. Societies Anonyme, etc., 6 U. S. App. 335, 3 C. C. A. 455, 53 Fed. 98, where Mr. Justice Jackson, speaking for this court, discusses the proper scope of action by a circuit court of appeals upon an appeal from a preliminary injunction under the seventh section of the circuit court of appeals act. We are to consider the correctness of the order from the same standpoint as that occupied by the court granting it, and if we find, after a consideration of the grounds presented to that court for its action, that its legal discretion to grant or withold the order was not improvidently exercised, we should not disturb its action."

In the case of *Southern Pacific Company v. Earl* 82 F. R. 690, the Circuit Court of Appeals for the Ninth Circuit, in passing upon an appeal from an order granting a preliminary injunction laid down the following rule:

"The principles which govern courts in granting preliminary injunctions in this class of actions are the same upon which courts of equity constantly act in granting such injunctions in other cases of equitable cognizance. The order for such an injunction does not finally determine the rights of the parties to the action, and its only purpose and effect are to preserve the existing state of things until the case has been fully heard by the court, and the entry of a final decree therein. And it is equally well

settled that the granting of a provisional injunction rests in the sound discretion of the trial court, and that it is not necessary that the court should, before granting it, be satisfied from the evidence before it that the plaintiff will certainly prevail upon the final hearing of the cause. On the contrary, to adopt the language of the court in Georgia v. Brailsford, 2 Dall. 402, 'a probable right, and a probable danger that such right would be defeated without the special interposition of the court,' is all that need be shown as the basis for such an order. See, also, Blount v. Societe, etc., 3 C. C. A. 455, 53 Fed. 98, and cases therein cited.

Inasmuch as the granting of an injunction pendente lite is committed to the discretion of the trial court, it necessarily follows—and so the authorities uniformly hold—that upon an appeal from such an order the only question which the appellate court is called upon to determine is whether the court, in making such an order, abused its discretion. If there was before the court evidence having a reasonable tendency to make out a prima facie case for the plaintiff, the order granting the injunction will generally be affirmed, notwithstanding there may have been a material conflict in the evidence submitted to the court at the time of making its order; or, stating the same rule in different words, the decision of the judge who made the order will not be reversed unless it appears, after a consideration of all the evidence upon which his action was based, that his legal discretion to grant or withhold the order was improvidently exercised. Duplex Printing-Press Co. v. Campbell Printing-Press & Manuf'g. Co., 16 C. C. A. 220, 69 Fed. 253; Bissell Carpet-

> Sweeper Co. v. Goshen Sweeper Co., 19 C. C. A. 25, 72 Fed. 550. We proceed then, to consider whether the circuit court exceeded its legal discretion in making the order appealed from." pp. 691, 692.

The above case in the 82 F. R. was followed by Judge Simonton in an opinion rendered by him in the Circuit Court of Appeals, Fourth Circuit, in the case of *Rahley vs. Columbia Phonograph Co.*, 122 F. R. 623, at p. 625, as follows:

> "The appellant sets out 10 assignments of error. They all go to the merits of the controversy, and could very properly be discussed if the case were here after a full hearing. But the question this court at this stage is called upon to decide is whether the court below, having the discretion to grant or refuse the temporary injunction, has in this instance abused its discretion.
>
> The law is so well stated by the Circuit Court of Appeals, Ninth Circuit, in The Southern Pacific Company v. Earl, 27 C. C. A. 185, 82 Fed. 690, that we adopt it."

The Court then set forth the above quoted paragraph from the *Earl* case.

In this case, Appellee recognizing how one-sided ex parte affidavits are, as a rule, produced its witnesses before the Court for examination and cross-examination, and they were so examined.

It is submitted that Congress in its wisdom enacted Section 266 of the Judicial Code, which made it necessary to give notice and to secure the action of

a Court of three judges before an interlocutory injunction could be had restraining the enforcement of a state statute or restraining the action of any officer in the enforcement of such statute, and this was for the obvious purpose of preventing ill advised action in such an important matter by a single judge, and it is submitted that even greater weight should be given by this Court to the exercise of such discretion by three Judges than has been the case with interlocutory injunctions heretofore, and the discretion so exercised should not be set aside by this Court, unless on the record clearly erroneous, and this regardless of whether on the final trial of the case on its merits the action of the lower court may or may not be sustained.

III.

The Law of Mississippi does not authorize the Railroad Commission of Mississippi to enter the orders enjoined, and the threatened enforcement of said orders, with a heavy penalty for failure to comply, denied to Appellee the equal protection of the law.

It is a denial of equal protection of the laws and a deprivation of property without due process of law if these orders require the Railroad Company to do an act not required of the Railroad Company by any law, or any valid order under any constitutional law.

Appellee, Railroad Company, denies that the

Railroad Commission of Mississippi has the power to order it to put into operation the said trains.

The Railroad Commission is the administrative board, so to speak, of the Legislature, and can only exercise the specific statutory authority given it. The Supreme Court of Mississippi in enumerating the powers given the Commission by the Legislature, said:

> "The Railroad Commission of the state of Mississippi is a creature of the Legislature. It exists only by virtue of chapter 139 (section 4826-4899) of the Code of 1906, and all of its powers and duties are therein specially enumerated. *It may be stated, in this connection, that we have no general statute submitting to the Railroad Commission general supervision over railroad companies, as will be found in some states; and, while general power is given to the commission to do many things, however, in each instance it will be found that the power is specifically granted.* (Italics the writer's) It is universally held that a Railroad Commission is a mere administrative or advisory board created to carry out the will of the Legislature, and that, before it can do any act, it must be able to point to its grant of power from the Legislature, which power must affirmatively appear and must be given in clear and express terms, and nothing will be had by inference."

Gulf & S. I. R. R. Co. v. Railroad Commission of Mississippi, 94 Miss. 124, 49 Sou. Rep. 118.

There has been no amendment of the laws of

Mississippi in regard to the supervision of common carriers touching this point since the above decision was rendered. That decision of the Mississippi Supreme Court, interpreting the laws of the State of Mississippi, establishes beyond argument that the Legislature has not delegated to the Railroad Commission general supervision over railroad companies. It follows, that if the Railroad Commission of Mississippi had the power to enter the orders it must have secured the power by a specific statute conferring the authority. It is asserted that Appellant has failed in its brief to refer the Court to any statute of Mississippi which confers upon the Railroad Commission the power to enter an order requiring Appellee to put into operation on its line six daily trains, or any trains. Attention is called to the fact that no one of these trains were originally put on under any order of the Railroad Commission.

Appellant states that it has been the custom for the Commission to exercise general powers of supervision (Appellant's Brief, p. 7). There is not in the record any proof of such custom, and in the case of *G. & S. I. R. R. Co., supra,* the Court held that there was no statute giving to the Railroad Commission general supervision.

Appellant quotes as sustaining the power of the Commission Section 184 of the Constitution of Mississippi (App. Brief p. 8). That Section of the Constitution provides that railroads which carry persons or property for hire shall be public highways, and all railroad companies so engaged shall be common carriers, etc. This is not denied, and it is not under-

stood what pertinency that section has to the point at issue.

Appellant next quotes Section 4839 of the Mississippi Code (App. Brief, p. 8). This section sets forth what is discrimination and defines extortion, and, it is submitted, has no bearing on the point now discussed.

Appellant, after setting forth the above referred to sections, states:

> "It is, therefore, clear that the State has a right to make regulations governing the facilities and charges on public highways."

The State may have the right but that in no wise answers the question asked, which is,—Point out where the State, through its Legislature, has delegated to the Railroad Commission of Mississippi the authority to regulate the number of trains operated on the line of any railroad in the State of Mississippi?

Appellant then cites as sustaining the proposition that the State has a right to make regulations governing the facilities and charges on public highways, which proposition is not denied, the following cases:

> *Stone vs. Yazoo, etc., Co.*, 62 Miss., 607;
> *Stone vs. Natchez R. R. Co.*, 62 Miss., 646;
> *A. & V. R. R. Co. vs. Railroad Commission*, 38 Sou., 356; 86 Miss. 667.

It seems unnecessary to discuss in detail the

above three cases which have been cited by Appellant. The two cases in the 62nd Mississippi hold generally, that the power of a state to fix rates of compensation for the carriage of freight within its borders did not interfere with the Commerce Clause of the Constitution of the United States, and that while the Railroad Company could fix its rates within the limits of its charter, it was, nevertheless, subject to the control of the State and must yield to the authority of the State to supervise it, and that the State had the right to create the agency to exercise such supervision. The A. & V. case in the 86 Mississippi held, generally, that the tariff which was attacked operated so as to work an unjust discrimination. It further held that the Commission had the power to make a change in the tariff of rates on the ground that the charge made therein was more than just compensation, or worked unjust discrimination.

It is respectfully submitted that cases which decide that a state *may* regulate carriers through a Commission do not aid us in determining whether the Mississippi Railroad Commission *has* been empowered by the Legislature to require the installation and operation of the trains which Appellee was ordered to operate.

Appellant next refers to and quotes Section 4843 of the Code of Mississippi of 1906 (App. Brief, p. 9). A reading of this Section will show that all that was attempted to be done by that section was to give to the Railroad Commission the power to fix the charges and to supervise and regulate all

persons, who may own or operate express, telegraph, telephone and sleeping car companies, car service associations, or other associations governing or controlling cars or rolling stock of railroads in this state *in the same manner as railroads.* It cannot be seriously contended that this section confers any authority upon the Commission to order the installation of certain trains.

We now come to the only section which, it is submitted, could possibly, under any proper construction, aid us in deciding this question, and that is Section 4849 of the Code, which is set out in full in Appellant's Brief (p. 10).

One of the cardinal rules of interpretation of a legislative act is to ascertain what is the usual, ordinary and customary meaning of the language employed. The statute gives the Commission the right to hear and determine "all complaints made of any time schedule * * * on the ground that the same, in any respect, is, in the case of time schedules, unnecessarily inconvenient for the public." A time schedule means what we ordinarily call a timetable, or a list of trains showing the arrival and leaving time of said trains from stations. The statute gives the Commission the right to determine a complaint of any time schedule, not generally, but "on the ground that the same, in any respect, is, *in the case of time schedule, unnecessarily inconvenient for the public," etc.* To the average mind that means the Commission may re-arrange the arrival and departure time of trains. It does not mean that the Commission may require the opera-

tion of additional trains. If anyone was attempting to pass an act giving to the Commission the right to compel railroads to put on additional trains, would he use the language above quoted? It would have been so easy to say that the Railroad Commission, on complaint of inadequate passenger facilities, may require every railroad to provide sufficient passenger trains.

That the above interpretation of Section 4849 is correct is shown by the language of the Mississippi Supreme Court in the case of *G. & S. I. R. R. vs. Railroad Commission of Mississippi, supra.* That case was not only fully considered, but it was re-argued. The court in that case said, with reference to the meaning of Section 4849:

> "It is contended on behalf of the appellee that section 4849 of the Code conferred upon the Railroad Commission the authority to make the order in question. This section gives the commission power, among other things, to hear and determine all complaints made of any time schedule. We do not think that the power to hear and to determine complaints of any time schedule is sufficiently broad to give the Railroad Commission the authority which it has assumed in this case. In our opinion the authority to determine complaints made of any time schedule, and to make any change deemed proper therein, as provided in said section, conferred upon the commission authority only to regulate the time at which any train should arrive and depart from any regular stopping place, and cannot be so construed as to confer upon the commission the right to compel a railroad com-

pany to stop a passenger train at a point other than a regular station."

It is, therefore, contended that the claim of the Commission of power under Section 4849 to require the putting on of new trains is not sound. We do not understand that the Commission denies that its order, in effect, requires the establishment of new trains. This is true, because the former trains which were taken off, except 11 and 12, were interstate trains, and the Commission has no right to regulate those. What it did was to order the inauguration of four new state trains in lieu of what were formerly interstate trains, and to order the reinstatement of two state trains.

The only other statute which Appellant claims gives it authority to enter the said orders is Section 4860 of the Code of Mississippi. That Section reads as follows:

"4860. (4306) Sufficient passenger-cars to be provided.—Every railroad shall furnish a sufficient number of passenger-cars to comfortably accommodate and seat its passengers; if any railroad shall fail to do so, the Commission shall entertain the petition of any person cognizant of the facts. When the petition is filed, the railroad shall be duly notified thereof, and, after investigating the case, the Commission shall make and certify to the railroad such orders as to the number and character of passenger-coaches necessary for the public convenience as the Commission shall deem proper; and in any proceeding concerning the matter, such order of

the Commission shall be deemed prima facie reasonable and proper."

It requires no argument to show that Section 4860 of the Code does not authorize the Commission to require the putting on of new trains. It only gives the Commission the right to require the railroad to "furnish a sufficient number of passenger-cars to comfortably accommodate and seat its passengers". If the Commission's order had directed this Company to put additional coaches on trains it had already established, the Commission could point to the above Section 4860, and if it be shown that there are not sufficient passengers cars on the trains now operated to comfortably accommodate the passengers there will be no denial of authority in the Commission to enter an order with respect thereto.

It is true that the Commission has the power, reasonably exercised, to determine a complaint based on the unnecessary inconvenience of a time schedule, and also that the Commission has the power, reasonably exercised, to entertain the petition of any person based on the failure of the Railroad to furnish a sufficient number of passenger-cars. Appellant says "it is immaterial whether the Company can operate one train so as to make all these schedules required by the Commission or whether it shall operate different trains."

It may be immaterial to the Commission, but it is not to the Railroad Company. If what appellant says is correct then there is no difference as a matter of law between the Commission saying to the

Railroad Company "You have two trains each way daily and they operate between points in Mississippi on an inconvenient schedule, change your schedule", and the Commission saying "You have in operation on your line certain trains and they are operated on a convenient schedule, but the Commission orders that you put on six new trains."

We submit that Section 4860, coupled with Section 4849, clearly shows that the Legislature authorized the Commission to regulate the service given and did not authorize it to require new train service.

In certain states the authority to enter such an order has been upheld because of the general power of regulation given the Commission of those states by the Laws of those states, but in this case we are precluded from any argument that there is any such general power given the Commission because of the language of the Supreme Court of Mississippi in the *G. & S. I. R. R. case,* above quoted, in which the Court says:

> "It may be stated in this connection that we have no general statute submitting to the Railroad Commission general supervision over railroad companies, as will be found in some states; and while general power is given the commission to do many things, however, in each instance it will be found that the power is specifically granted."

It is not legal to broaden the language of such a statute as this. The Commission, having only the

power delegated to it, must be able to point out, without a doubt, the statute giving it the power. If there is doubt it has not the power.

In the case of *Siler v. L. & N. R. R. Co.*, 213 U. S., 175, there was a bill filed by the L. & N. R. R. Co., contending that the order of the Kentucky Commission, prescribing maximum rates on the transportation of all commodities, was violative of the Constitution of the United States. The contention was also made by the Railroad Company that the Commission had no power to make the order in question under a proper construction of the state statute.

On the question of whether the Commission had the power to make the order, the Court said:

> "The Commission, as an extraordinary tribunal of the State, must have the power herein exercised conferred by a statute in language free from doubt. The power is not to be taken by implication; it must be given by language which admits of no other reasonable construction." 213 U. S. 194.

Aside from the lack of power to enter the orders referred to, if it be conceded, for argument sake only, that Section 4849 gave the Commission of Mississippi power to order Appellee to install said six trains, the said orders are not legal, because Section 4849 provided:

> "The Commission shall docket, hear and determine all complaints made of any time schedule * * * The complaint must be in writing and specify the grounds of complaint or the

items in the tariff against which complaint is made; and if it appear to the Commission that the matter ought to be investigated the Commission shall forthwith furnish to the railroad a copy of the complaint, together with notice of the time and place of hearing, etc."

In this case the Commission, as appears from the citation made a part of the bill, (Rec. pp. 14-15), of its own motion cited Appellee to show cause why it should not be required to continue local passenger trains known as numbers 7, 8, 9, 10, 11 and 12.

Appellant in answer to the point of no complaint, set forth Section 4833 and 4834 (App. Bf. p. 6). Section 4833 provides that railroads shall take notice of the time of making the returns and reports required by law, and must be given ten days' notice of the time and place at which any revision of its tariff charges, or complaint concerning the same, will be considered. In all cases of complaint against a railroad the Commission shall give the party complained of reasonable notice but not less than five days. This would give ground for contending that the revision, of tariff charges might be taken up without complaint, but emphasizes the point that in other matters there must be a written complaint.

Section 4834 provides how notice may be given to a railroad by depositing the same in the post office, etc. Appellant contends that the notice under the section cited was sufficient. Appellee did not and does not contend that there was any defect due to lack of proper service of notice. The point is that

if Appellant relied upon Section 4849, then there had to be a complaint and the complaint had to be in writing and had to specify the grounds of complaint, and it was the duty of the Commission to furnish to the Railroad a copy of the complaint. The point made in the lower court and here is that there was no complaint, and that if there was the Railroad Company received no copy of it, and hence the order issued was void and to enforce it was contrary to the rights of Appellee.

Appellant refers, on Page 7 of its brief, to the case of I. C. R. R. Co. v. Dodd, 61 Sou. 743, as an authority to sustain the statement made that the notice, under the Section cited, is sufficient. While there is no point made as to the insufficiency of the notice, it may be said in passing that the case referred to in 61 Sou. holds that the Supreme Court of Mississippi is, by the Constitution of that State, constituted a court of appeals, and that the Mississippi Commission is only an administrative agency and cannot render a judicial decision, and therefore that Section of the Mississippi Laws which gives a direct appeal to the Supreme Court of Mississippi is invalid.

The Legislature of Mississippi has not by general statute required of Railroads the operation of any given number of trains. The Law of Mississippi which constitutes the charter of the Alabama Corporation in that State, does not require the operation of trains in any particular manner.

The interlocutory injunction was properly granted because the Commission, a Board of limited authority, is not authorized under the laws of Mississippi to enter the orders it made in this case, and to enforce an order for which there is no legal authority under the laws of Mississippi amounts to denying to this plaintiff the equal protection of the laws and to a taking of this Company's property without due process of law, contrary to the constitution of the United States.

The Court below passed upon the validity of the orders of the Commission, as entered, and if the Commission was without authority to enter the orders complained of the Court could not, of its own motion substitute any relief that might have been granted.

IV.

The Orders of the Commission Deprive the Railroad Company of its Property without Due Process of Law.

The orders deprive Appellee of its property without due process of law in that they compel the operation of six trains no one of which pays the full cost of operation.

The service rendered is a part of the rate. If it is illegal to lower the rate and thus take the property of the carrier it must be illegal to maintain the rate and require such additional service as would take the property of the carrier. The loss to the Appellee is the same whether the Mississippi Commis-

sion enters an order requiring it to charge one cent a mile per passenger which will result in a loss of $10,000.00 per month, or enters an order that the carrier continue to charge three cents a mile but must run trains every hour in the day at a loss of $10,000.00 per month. We are unable to draw any proper legal distinction between being required to operate an additional train service at a loss and being required to charge an unremunerative rate. This view of this case is stated because most of the cases dealt with by this Court have been rate cases.

Among the first cases construing the due process clause of the Constitution was one in which this Appellee was a party, the case being known as *The Railroad Commission Case,* 116 U. S. p. 307. The Court in that case, at p. 331, said:

> "This power to regulate is not a power to destroy, a limitation is not the equivalent of confiscation. Under pretence of regulating fares and freight, the State cannot require a railroad corporation to carry persons or property without reward; neither can it do that which in law amounts to a taking of private property for public use, without just compensation or without due process of law."

In the case of *St. L. & S. F. Ry. vs. Gill,* 156 U. S., 649, at p. 657, the Court said:

> "This court has declared, in several cases, that there is a remedy in the court for relief against legislation establishing a tariff of rates which is so unreasonable as to practically des-

troy the value of property of companies engaged in the carrying business, and that especially may the courts of the United States treat such a question as a judicial one, and hold such acts of legislation to be in conflict with the Constitution of the United States, as depriving the companies of their property without due process of law, and as depriving them of the equal protection of the laws."

The court then cited a number of cases.

In the *Minnesota Rate Cases,* 230 U. S. 352, at p. 433, the Court said:

"Here we have a general schedule of rates, involving the profitableness of the intrastate operations of the carrier taken as a whole, and the inquiry is whether the State has overstepped the constitutional limit by making the rates so unreasonably low that the carriers are deprived of their property without due process of law and denied the equal protection of the laws."

"The property of the railroad corporation has been devoted to a public use. There is always the obligation springing from the nature of business in which it is engaged—which private exigency may not be permitted to ignore—that there shall not be an exorbitant charge for the service rendered. But the State has not seen fit to undertake the service itself; and the private property embarked in it is not placed at the mercy of legislative caprice. It rests secure under the constitutional protection which extends not merely to the title but to the right to receive just compensation for the service given to the public." Quoting many decisions.

The Court in the above case in 230 U. S. summarized what the carrier was entitled to in the following language, at page 434:

> "The basis of calculation is the 'fair value of the property' used for the convenience of the public. Smyth vs. Ames, supra, (p. 546). Or, as it was put in San Diego Land & Town Co. vs. National City, supra, (p. 757), 'What the company is entitled to demand, in order that it may have just compensation, is a fair return upon the reasonable value of the property at the time it is being used for the public', See also San Diego Land & Town Co. vs. Jasper, supra; Wilcox vs. Consolidated Gas Co., supra."

The rule for determining whether an intrastate business affords a fair return is well settled by this court, and is as set forth in the *Minnesota Rate Cases,* 230 U. S. 352, at p. 435, as follows:

> "Where the business of the carrier is both interstate and intrastate, the question whether a scheme of maximum rates fixed by the State for intrastate transportation affords a fair return, must be determined by considering separately the value of the property employed in the intrastate business and the compensation allowed in that business under the rates prescribed. This was also ruled in the Smyth Case (ib., p. 541). The reason, as there stated, is that the State cannot justify unreasonably low rates for domestic transportation considered alone, upon the ground that the carrier is earning large profits on its interstate business, and on the other hand, the carrier cannot justify unreasonably high rates on domestic business because

only in that way is it able to meet losses on its interstate business."

It is submitted with respect to the rule, that it only becomes necessary to ascertain the value of the property employed in either intra or interstate business, in order to determine what is a fair return thereon or whether the carrier receives just compensation, when the rate or service ordered by the Commission pays something more than the cost thereof. In other words, if the showing is that these trains did not pay the cost of operation it is manifestly immaterial what sum is to be taken as the investment upon which you are entitled to earn a fair return there being no return at all.

The uncontradicted evidence on this point is, that the cost per passenger train mile of operating these trains was approximately one dollar. (Rec. pp. 60, 72, 115). The earnings of trains 7, 8, 9, 10, 11 and 12 for the months of July, August and September, 1914, showed a revenue per train mile for July sixty-five cents, for August sixty-four cents, for September fifty-six cents. (Rev. p. 68). This revenue per train mile was not shown as to said trains for the State of Mississippi as separated from the other states into which they ran for the reason that said trains had not theretofore been operated solely within the State of Mississippi, and the revenues had been kept by trains. For the first five days in October, 1914, during which period trains 7, 8, 9 and 10 were run, the passenger revenue per train mile of those trains between Meridian, Mississippi,

and Waynesboro, Mississippi, the points between which the orders required them to operate, was thirty-six cents. The passenger revenue per train mile of trains 11 and 12 for the first five days of October, 1914, between Meridian, Mississippi, and Okolona, Mississippi, was twenty-five cents. (Rec. p. 71). The Chairman of the Mississippi R. R. Commission stated "I think one train would earn more than forty cents per train mile, yes sir." (Rec. p. 129). The actual out-of-pocket cost of operating said trains 7, 8, 9, and 10, between Meridian, Mississippi, and Waynesboro, Mississippi was 36.3c per train mile (Rec. p. 66). Appellant's witnesses placed this direct cost at 25.54c per train mile. Out-of pocket cost is defined by witnesses to mean the pay of employees on the train and fuel and supplies used on the train. It does not include any maintenance of way and structures or the wear and tear on the track or buildings; does not include the repair of the equipment used in said trains or any portion of the cost of dispatching said trains, or any portion of the wages of station employes or any charge for damage to live stock, or any proportion of traffic or general expenses, or advertising, etc., with all of which it should be charged its pro-rata. (Rec. p. 67). The General Manager of the Railroad Company testified:

> "This Company would have been justified, according to the earnings of these trains, in taking them off prior to the general business depression felt by this Company along with other business generally, because we gave the

trains a fair and honest trial for many months and they did not pay." (Rec. p. 61).

"These trains were not taken off to make up any loss being sustained on the business of the Company as a whole. They were taken off because they did not themselves pay the cost of operation and because, due to the falling off of the business of the Company as a whole, there was no general revenue out of which this Company could, during the depression, make up the deficit of these trains as it has in the past." (Rec. pp. 61-2).

The correctness of the rule as set forth in the above referred to decisions of this court being beyond dispute, and the Assistant Attorney General, seeming to recognize that a showing had been made that the individual trains did not pay anything over the cost of operation, (when all the items properly chargeable to the trains are taken into consideration), states the law applicable to this case to be:

"None of the reasons set forth for refusal to operate the said trains, or for an injunction thereon, will prevent the facility being required unless it can be shown that the intrastate business done by the Company within the State of Mississippi, taken as a whole, amounts to such a loss as would constitute a taking of property without due process of law." (App. Brief p. 26).

The question then arises as to whether a showing is made by Appellee of a taking of its property without due process of law on proof of loss in reve-

nue from the operation of each of the trains, or is it necessary for Appellee to also show that its business, taken as a whole, in the State of Mississippi, amounts to such a loss as would be confiscation.

It is submitted that the showing of loss due to the operation of these trains is all sufficient. In support of this we refer to the following cases:

Interstate Commerce Commission v. Union Pacific Railroad Co., 222 U. S. 541.

The Court said in that case, at pp. 546 and 549:

> "These appeals raise the single question as to whether, making the 45c rate, the Commission acted within or beyond its power."

The Court in discussing the question of the reasonableness, said:

> "Where the rates as a whole are under consideration, there is a possibility of deciding with more or less certainty, whether the total earnings offer a reasonable return. But whether the carrier earned dividends or not sheds little light on the question as to whether the rate on the particular article is reasonable, *For, if the carrier's total income enables it to declare a dividend, that would not justify an order requiring it to haul one class of goods for nothing or for less than a reasonable rate. On the other hand, if the carrier earned no dividend, it would not have warranted an order fixing an unreasonably high rate on such article.*" (Italics the writer's).

The Court also said in discussing the question as to the effect to be given to the orders of the Interstate Commission:

> "A question of fact may be involved in the determination of questions of law, so that an order regular on its face may be set aside if it appears that the rate is so low as to be confiscatory and in violation of the constitutional prohibition against the taking of property without due process of law, etc., Ib 547".

In the case of *Southern Railway Company vs. St. Louis Hay & Grain Company,* 214 U. S. 297, there was involved the validity of a charge per car made by the Railroad Company for the privilege of reconsigning. The Commission held the charge unreasonable. The Lower Court sustained the Commission. The Railroad appealed to the Supreme Court, which Court in discussing the validity of the Commission's order, said:

> "We are unable to concur with the commission. If the stopping for inspection and reloading is of some benefit to the shipper and involves some service by and expense to the railway company, we do not think that the latter is limited to the actual cost of that privilege. It is justified in receiving some compensation in addition thereto. A carrier may be under no obligations to furnish sleeping or other accommodations to its passengers, but if it does so it is not limited in its charges to the mere cost, but may rightfully make a reasonable profit out of that which it does furnish. Especially is this

> true when as here, the privilege is in no sense a part of the transportation, but outside thereof. Whether the conclusion of the commission that the carrier is under no obligations to permit the interruption of the transit is right, and whether it is or is not under such obligation, it is entitled to receive some compensation beyond the mere cost for that which it does." Ib. 301.

It seems clear that the fact that the freight business in the State of Mississippi was conducted at a profit would furnish no sound reason why the Railroad Company should install additional passenger train service. Otherwise the shippers of freight would be paying not only the cost of carrying their freight and a reasonable profit thereon, but also making up the deficit in the operation of passenger trains.

It is certainly the general rule, as set forth by this Court in the above referred to cases, that a carrier is entitled to receive some compensation beyond the mere cost of that which it does. There are, it is true, certain sentences in some of the decisions of this Court which, if not read in connection with the facts of the case being decided, do appear, superficially, to be in conflict with the general rule above set forth. It is submitted that those cases do not really conflict. None of these cases sustain the proposition of Appellant that in such a case as this it is necessary for Appellee to show that its intrastate Mississippi business, "taken as a whole, amounts to such a loss as would constitute a taking of property without due process of law." What these cases

hold is that in considering the installation of a small physical facility, considered a primal duty, where the expense to the carrier is, comparatively speaking, small or trivial when weighed against a great public interest or a public convenience to many people then this Court will not interfere, and hold that such small expense or proof that some loss would result thereby in and of itself and by itself amounts to a taking of property without due process of law, provided the carrier is able to earn a fair return upon its entire business.

We now discuss such of those cases as we have found and distinguish each from the case at hand:

The first of these cases that we have found is that of *Wisconsin, etc., R. Co., vs. Jacobson,* 179 U. S 287.

This was a case which went to the Supreme Court by writ of error from the Supreme Court of Minnesota, to review the judgment of that court, affirming the judgment of the District Court directing plaintiff in error and a certain other railroad company to make track connections. The case began by Jacobson filing his petition before the Railroad Commission of the State under a law of Minnesota which required track connections. The railroad defended on the ground that to compel it to make the connection would violate the Constitution of the United States. The Court said:

"At common law the courts would be with-

out power to make such an order as was made in this case by the state court. Legislative authority would be necessary in order to give power to the courts to render a judgment of this kind. If power were granted by the legislature, and it amounted in the particular case *simply to a fair, reasonable and appropriate regulation of the business of the corporation, when considered with regard to the interests both of the company and of the public, the legislation would be valid, and would furnish, therefore, ample authority for the courts to enforce it.* (Italics the writer's). Atchison &c Railroad Company vs. Denver &c Railroad Company, 110 U. S. 667, 681. People ex rel &c. vs. Boston & Albany Railroad Company, 70 N. Y. 569. People vs. Railroad Company, 104 N. Y. 58. p. 296."

The Court further said:

"Taking the facts which we have already enumerated into consideration we think there is no justification furnished for the argument that the judgment, if enforced violates any of the constitutional rights of the plaintiff in error. In so deciding we do not at all mean to hold that under no circumstances could a judgment enforcing track connections between two railroad corporations be a violation of the constitutional rights of one or the other, or possibly of both such corporations. It would depend upon the facts surrounding the cases in regard to which the judgment was given. The reasonableness of the judgment with reference to the facts concerning each case must be a material, if not a controlling, factor upon the question of its validity. A statute or a regulation provid-

ed for therein, is frequently valid, or the reverse according, as the fact may be, whether it is a reasonable or an unreasonable exercise of legislative power over the subject-matter involved. And in many cases questions of degree are the controlling ones by which to determine the validity, or the reverse, of legislative action." p. 301.

The Court also said:

"Although to carry out the judgment may require the exercise by the plaintiff in error of the power of eminent domain, and will also result in some, comparatively speaking, small expense, yet neither fact furnishes an answer to the application of defendant in error." p. 302.

The above case involved a small expense of construction of a connecting track, and there does not appear to have been any claim on the part of the Railroad Company that this mere cost of construction would take its property, or that it was not earning a fair return on its whole property. The difference between this case and the one at bar is striking. In the Jacobson case the Court was enforcing a State statute requiring track connections between railroads, and the Court said the Railroad Company could not refuse "upon the sole ground that it may thereby *somewhat lessen* (Italics the writer's) the earnings of its road. Or can it refuse to make such connections because, if they were made, wood could be brought from the forests of northern Minnesota to all towns along its line west of Hanley Falls, and there sold for a less price than

can now be done, when without such connection being made the demand for the wood along the line of the road of the plaintiff in error is nevertheless constantly decreasing owing to its quality and price." There is not stated in the report of the case any facts showing that the construction of the track would itself take the property of the railroad, or that any emergency or crises existed in the matter of the earnings and expenses of the Railroad Company.

The next case is *Minneapolis vs. St. Louis R. Co.* 186 U. S. 257:

This was a petition for a mandamus filed in the District Court of Ramsey County by the State, upon the relation of the Railroad and Warehouse Commission, against the Minneapolis and St. Louis Railroad Company and several other railroad companies, (the first of which alone answered and sued out this writ of error,) to compel such companies to adopt and publish a joint through rate fixed by the Commission upon shipments of hard coal in carload lots, from the city of Duluth to certain points in the southern and western parts of the State of Minnesota, and to enjoin them from demanding or receiving any greater sum for such through shipments than that fixed by the Commission. It will be noted that the rate involved was a joint through rate on hard coal.

The second question raised was whether the tariff fixed by the Commission was wholly inade-

quate and not compensatory. In discussing the testimony the court said at p. 265:

> "This rate, fixed by the Commission only upon hard coal in carload lots, was not met by any showing that at the rates fixed by the Commission there would be no profit or an insufficient profit upon the coal so transported, etc."

At p. 266:

> "It is quite evident that this testimony has but a slight, if any, tendency to show that even at the rates fixed by the Commission there would not still be a reasonable profit upon coal so carried. It was not even shown that the joint tariff fixed by the roads themselves upon coal was not disproportionately high as compared with rates upon other articles or as gauged by a proper classification. The difficulty with defendant's case is that it made no attempt to show the cost of carrying coal in carload lots, and that even in proving that the cost of transporting *all* merchandise exceeded the rate fixed by the Commission on this coal, the interest upon bonds and dividends upon stock were included in operating expenses. The propriety of the first is at least doubtful, the impropriety of the second is plain. *We do not intend, however, to intimate that the road is not entitled to something more than operating expenses.* (Italics the writer's). It was shown that coal belongs to one of the lowest classes of freight, and this is particularly true of the coal received from Duluth at Minneapolis, which was delivered at the Minneapolis and St. Louis Company upon their tracks at Minneapolis. Besides this, coal in carload lots was a

comparatively insignificant item of the total freight carried, being but 2583 tons for an entire year."

The Court in its opinion said that the rates upon other merchandise which are not disturbed by the Commission might be sufficient to earn a large profit to the Company, though it may earn little or nothing upon coal in carload lots; also that to meet competition from other roads the companies themselves might fix a disproportionately low rate upon certain classes of freight. It then held that the right to permit this to be done was in the Interstate Commerce Commission, and that the Courts had never decided that the Commission might compel such reductions.

The Court then said:

"We do not think it beyond the power of the State Commission to reduce the freight upon a particular article, provided the companies are able to earn a fair profit upon their entire business, and that the burden is upon them to impeach the action of the Commission in this particular."

It also said:

"Each case must be determined by its own considerations, and while the rule stated in Smyth vs. Ames is undoubtedly sound as a general proposition that the railways are entitled to a fair return upon the capital invested, it might not justify them in charging an exorbi-

tant mileage in order to pay operating expenses, if the conditions of the country did not permit it."

The holding was that the action of the Commission in fixing the rate complained of was not shown to be so unreasonable as to amount to a taking of property without due process of law. It was not held that if the showing was clear that the rate on coal did not pay the cost of operation that such rate would not be confiscatory; on the contrary the court took pains to point out wherein the evidence failed to show that there would be no profit or an insufficient profit. Attention is directed here to the insignificant item of freight that was involved and to the fact that the court said that it was not beyond the power of the Commission to *reduce* the freight upon a particular article provided the companies are able to earn a fair profit upon their entire business. These facts are sufficient to distinguish that case from the one at bar.

The next case is that of *Atlantic Coast Line vs. North Carolina,* 206 U. S. 6.

That case involved an order of the North Carolina Corporation Commission, which directed the Coast Line to run a train to make connection with a certain train on the Southern Railway. The connection was testified to be a very important connection. The Commission of North Carolina found in part as follows:

"Considering the operation of an extra train from Rocky Mount to Selma or the exten-

sion of the run of one of the branch trains as directed in the previous order, and the objection that a loss would be entailed in the operating expenses for such train or trains, the Commission treated that fact as immaterial, because it found as a matter of fact that the total receipts of the Coast Line in North Carolina, taken from business in that State, were sufficiently remunerative, and therefore that even if the train was operated at a loss, as that loss would not reduce the total earnings below what was an adequate remuneration for the whole business, the order would not take the property of the road without due process of law." p. 16.

When the case was before the Superior County Court of North Carolina one of the findings of fact was that it would cost $40.00 per day to operate the train, and that its receipts would be $25.00. On appeal to the Supreme Court of North Carolina that court, in reviewing the means of performance of the order requiring a connection at Selma, held:

"In doing so it was decided that although to execute the order of the Commission it might be imperative for the Coast Line to operate at a pecuniary loss a new train from Rocky Mount to Selma, or the extension with like result of the movement of one or the other of the branch trains from Rocky Mount to Selma, no violation of any right of the Coast Line protected by the Constitution of the United States or of the State would arise. This was based upon the finding by the court that the average net earning of the railroad from its business in North Carolina was of such a character that an adequate remun-

eration would remain after allowing for any possible loss which might arise from operating either of the trains in question. 137 N. Car. 14." p. 19.

Attention is directed here to the fact that the average net earnings of the Railroad from its business in North Carolina was of such a character that an adequate remuneration would remain after allowing for the loss on this train. This Court said:

"As the public power to regulate railways and the private right of ownership of such property coexist and do not the one destroy the other, it has been settled that the right of ownership of railway property like other property rights finds protection in constitutional guarantee and, therefore, wherever the power of regulation is exerted in such an arbitrary and unreasonable way as to cause it to be in effect not a regulation but an infringement upon the right of ownership, such an exertion of power is void because repugnant to the due process and equal protection clauses of the Fourteenth Amendment. The result, therefore, is that the proposition relied upon is well founded if it be that the order which the court below enforced was of the arbitrary and unreasonable character asserted.

In coming to consider the question just stated it must be borne in mind that a court may not, under the guise of protecting private property, extend its authority to a subject of regulation not within its competency, but is confined to ascertain whether the particular assertion of the legislative power to regulate has been exercised to so unwarranted a degree as in substance

and effect to exceed regulation, and be equivalent to a taking of property without due process of law, or a denial of the equal protection of the laws." (p. 20).

One of the important facts mentioned by this Court was:

"In considering the facts found below as to the connection in question, that is, the population contained in the large territory whose convenience was subserved by the connection, and the admission of the railroad as to the importance of the connection, we conclude that the order in question, considered from the point of view of the requirements of the public interest, was one coming clearly within the scope of the power to enforce just and reasonable regulations." p. 22.

The Court also said:

"Conceding, as must be done, that the nature and extent of the existing facilities furnished by a carrier for the public convenience are essential to be considered in determining whether an order directing an increase of such facilities is just and reasonable, and that the deficiency of facilities must clearly appear to justify an order directing the furnishing of new and additional facilities, we think the proposition here relied on to be without merit." pp. 22 and 23.

The Court then said:

"The contention is that the fact that some

loss would result from the requirement that the extra train be operated, in and of itself, conclusively establishes the unreasonableness of the order and demonstrates that to give it effect would constitute a taking of property without due process of law in violation of the Fourteenth Amendment."

The Court quoted with approval the doctrine of Smyth vs. Ames, and then said:

"But this case does not involve the enforcement by a State of a general scheme of maximum rates, but only whether an exercise of state authority to compel a carrier to perform a particular and specified duty is so inherently unjust and unreasonable as to amount to the deprivation of property without due process of law or a denial of the equal protection of the laws. In a case involving the validity of an order enforcing a scheme of maximum rates of course the finding that the enforcement of such scheme will not produce an adequate return for the operation of the railroad, in and of itself demonstrates the unreasonableness of the order. Such, however, is not the case when the question is as to the validity of an order to do a particular act, the doing of which does not involve the question of the profitableness of the operation of the railroad as an entirety. The difference between the two cases is illustrated in St. Louis &c. Ry. Co. vs. Gill, 156 U. S. 649, and Minneapolis & St. Louis R. R. Co. vs. Minnesota, 186 U. S. 257. But even if the rule applicable to an entire rate scheme were to be here applied, as the findings made below as to the net earnings constrain us to conclude that adequate remun-

eration would result from the general operation of the rates in force, even allowing for any loss occasioned by the running of the extra train in question, it follows that the order would not be unreasonable, even if tested by the doctrine announced in Smyth vs. Ames and kindred cases." pp. 24 and 25.

The Court said that the case in hand "concerns solely an order directing a carrier to furnish a facility which it is a part of its general duty to furnish for the public convenience."

The Court said further:

"The distinction between an order relating to such a subject and an order fixing rates coming within either of the hypotheses which we have stated is apparent. This is so because as the primal duty of a carrier is to furnish adequate facilities to the public, that duty may well be compelled, although by doing so as an incident some pecuniary loss from rendering such service may result. It follows, therefore, that the mere incurring of a loss from the performance of such a duty does not in and of itself necessarily give rise to the conclusion of unreasonableness, as would be the case where the whole scheme of rates was unreasonable under the doctrine of Smyth vs. Ames or under the concessions made in the two propositions we have stated. Of course, the fact that the furnishing of a necessary facility ordered may occasion an incidental pecuniary loss is an important criteria to be taken into view in determining the reasonableness of the order, but it is not the only one. As the duty to furnish necessary fa-

cilities is cotermious with the powers of the corporation, the obligation to discharge that duty must be considered in connection with the nature and productiveness of the corporate business as a whole, the character of the services required, and the public need for its performance." pp. 26 and 27.

In the *Coast Line Case* there was a conceded necessity for the connection, here there is absolute denial of necessity; in that case there was no showing or claim that the Coast Line was not making money on its business as an entirety, here the proof is quite the contrary, in that case the court constantly referred to the "incidental pecuniary loss," here it is great and direct. The instant case might be parallel if during normal times when Appellee was earning a reasonable general revenue, Appellee had been ordered to operate one train the necessity for which had been admitted.

The basic fact of that decision is that adequate remuneration would result from the general operation, and there was no showing of general emergency in the operations and finances of the Railroad Co.

The next case was that of *Missouri Pacific vs. Kansas,* 216 U. S., 262.

That was a case involving an order commanding Missouri Pacific Ry. to obey an order of the State Railroad Commission to put in operation a passenger train service between the Missouri-Kansas line and Madison, Kansas. The facts were that the

Railway ran a mixed train on the Madison Branch, and the order directed it to run a separate passenger train. One of the contentions of the Railway was that the order was confiscatory. The Court referred to the Atlantic Coast Line case, and quoted from it certain of the portions that are above quoted. In dealing with the question of whether the service should be ordered, notwithstanding it would cause a pecuniary loss, the Court referred to the insistence of the Railway that it was a case not only of proof that pecuniary loss would be occasioned by performing the particular service, but also of proof that the earnings from all sources produced no net revenue. The Court then said that this contention challenged the correctness of the inference of fact drawn by the court below, and required the Supreme Court to give an independent examination of the facts. It then decided that it was not necessary to give an independent examination, and held:

> "We say this because, when the controversy here presented is properly analyzed, the first and pivotal question arising is whether the order complained of did anything more than command the railroad company to perform a service which it was incumbent upon it to perform as the necessary result of the possession and enjoyment of its charter powers, and which it could not refuse to perform as long as the charter powers remained and the obligation which arose from their enjoyment continued to exist." pp. 277 and 278.

The Court also held:

> "But where a duty which a corporation is obliged to render is a necessary consequence of the acceptance and continued enjoyment of its corporate rights those rights not having been surrendered by the corporation, other considerations are in the nature of things paramount, since it cannot be said that an order compelling the performance of such duty at a pecuniary loss is unreasonable." p. 279.

The Court then held that it was a part of the duty of that Company on its road to run a train for passenger service and that a mixed train would not be compliance therewith.

In the above case the duty was a primal one, that of operating a passenger service, and did not involve the question of the operation of *additional* passenger trains; in addition the Court did not consider the disputed fact as to pecuniary loss.

The case of *Northern Pacific Railway vs. North Dakota*, 216 U. S. 579, was a proceeding by the Attorney General of North Dakota, charging the Northern Pacific Railway with violation of a law fixing rates for the carriage of coal within the State, and asking for an injunction. The Railroad Company answered that the act was void under the Fourteenth Amendment, because the maximum rates fixed were inadequate and confiscatory. The Supreme Court of North Dakota decided that the injunction should issue enjoining the Railroad Company from continu-

ing to violate the rate on coal. The Supreme Court of the United States said:

> "The grounds of its decision were that the act referred only to transportation wholly within the State and therefore was not bad under Art. I, Paragraph 8, thus removing that question; and that the evidence did not prove that the rates would entail a loss on the carriage of coal, so that it was not necessary to decide whether in that event it would be unconstitutional, if the railroad made a fair profit on its whole business within the State.
>
> The court did, however, intimate its opinion that if the railroad was able to make a fair profit upon its whole business within the State it might be required to carry a particular commodity at cost or possibly below, and it expressed its opinion so strongly that the counsel for the plaintiff in error treats that doctrine as the ground of decision and the statement as to the insufficiency of the evidence as made only in the light of it and upon rather technical grounds. He argues that the evidence was undisputed, that the facts testified to and the fair inferences from them must be taken as proved, and that on those facts and inferences the constitutional question is raised. The evidence consisted of tables of rates in other States, computation as to the cost of transportation, and expert opinions, all of which were thought to converge to the conclusion that the statutory rates were unreasonable and less than the cost of carriage. But laying technical objections on one side and taking the facts as admitted, the argument for the State showed that there are too many elements of uncertainty in the calculation for us to say,

if we could, as to which we intimate no opinion, that the conclusion is proved, when the Supreme Court of the State says that it is not. The carriage of coal is a very small part of the railroad's business. The estimate of the cost is admitted to be uncertain, and to depend in part upon arbitrary postulates. It has to be increased considerably above the average cost for freight in order to make out the plaintiff in error's point. We are far from saying that the argument for doing so does not seem to us to have considerable probability on its side. We do not say that experiment may not establish a case in the future that would require a decision upon the question of constitutional law. But we can express no opinion upon it now. The great difficulty in the attempt to measure the reasonableness of charges by reference to the cost of transporting the particular class of freight concerned is well known and often has been remarked. It seems to us that the nearest approach to justice that can be made at this time is to follow the precedent of Wilcox vs. Consolidated Gas Co., 212 U. S. 19, as nearly as may be, and affirm the decree, but without prejudice to the right of the railroad company to reopen the case by appropriate proceedings if, after adequate trial, it thinks it can prove more clearly than at present the confiscatory character of the rates for coal."

Attention is called to this case because there was involved in it the rates on one particular commodity, and, as will be seen, the state court had intimated that if a railroad made a fair profit upon its whole business it might be required to carry a

particular commodity at cost, or possibly below. The Supreme Court said that the carriage of coal was a small part of the Railroad Company's business. The Supreme Court affirmed the lower court's decision, on the ground that the rates should be given a trial and said that the experiment might establish a case for the Railroad Company, and that the Railroad Company might reopen the case if, after adequate trial, "it thinks it can prove more clearly than at present the confiscatory character of the rates for coal," which amounted to *not* following counsel's suggestion that the service on one article might be required even at a loss.

In the case of *Missouri Pacific Ry. vs. Tucker,* 230 U. S. 340, there is involved the constitutionality under the Fourteenth Amendment of the statute of 1905, of the State of Kansas establishing maximum rates for transportation of oil, gasoline, etc., which fixed five hundred dollars as liquidated damages for violations of the Act. The Attorney General in his brief (p. 343), referred to the case of McCue vs. Northern Pacific above quoted, also to the Atlantic Coast Line case in 206 U. S., and the Missouri case in 216 U. S. to sustain the point that a road might be compelled to do certain acts at a positive loss.

The Supreme Court in its opinion, said:

> "In the case, however, of the establishment of certain rates without any hearing, the validity of such rates necessarily depends upon whether they are high enough to permit at least some return upon the investment (how much it

is not now necessary to state), and an inquiry as to that fact is a proper subject of judicial investigation. If it turns out that the rates are too low for that purpose, then they are illegal."

The Supreme Court did not deal with the question of whether the rates were reasonable or not, but reversed the case because the damages fixed deprived the carrier of its property without due process of law.

In the case of *Missouri Pacific Ry vs. Nebraska*, 217 U. S., 196, there was involved the constitutionality of the statute of Nebraska requiring railroad companies to make switch connections with grain elevators under certain conditions. The railroad contended that the statute was void under the Fourteenth Amendment. In the Attorney General's brief (pp. 203-4), the Coast Line case was quoted to sustain a statement that a railroad might be required to furnish facilities to accommodate the public though it suffer loss thereby.

The Supreme Court said:

"Now it is true that railroads can be required to fulfill the purposes for which they are chartered and to do what is reasonably necessary to serve the public in the way in which they undertake to serve it, without compensation for the performance of some part of their duties that does not pay. Misssouri Pacific Railway Co. vs. Kansas, 216 U. S. 262. It also is true that the States have power to modify and cut

> down property rights to a certain limited extent without compensation, for public purposes, as a necessary incident of government—the power commonly called the police power. But railroads after all are property protected by the Constitution, and there are constitutional limits to what can be required of their owners under either the police power or any other ostensible justification for taking such property away." p. 206.

The Court held that the statute was unconstitutional because it did not provide indemnity for what it required, and did not decide anything else.

Attention is directed to the quotation above given in the last case cited. That case holds, in effect that a railroad may be required to fulfill the purpose for which it is chartered, and to do what is reasonably necessary to serve the public even to the performance of some part of their duties that does not pay. The Court referred to the *Kansas case* in 216 U. S. because that was a case of an attempt by a railroad to abandon the operation of all passenger trains.

Then the Court said:

> "But railroads after all are property protected by the Constitution and there are constitutional limits to what can be required of their owners under either police power or any other ostensible justification for taking such property away." p. 206.

The other ostensible justification referred to

is that primal duty to the public referred to in the *Kansas* case and in the *Coast Line* case.

These are all of the cases that we have found which might tend to sustain a contention that the law requires Plaintiff to operate the said six trains, notwithstanding the fact that the operation of said trains would cause heavy pecuniary loss to Appellee at a time of great business emergency when its receipts from its entire business was falling off at the rate of $10,000.00 per day and when it had no general revenue from which to make up the deficit caused by the operation of said six trains, and when in the opinion of its management to be compelled to operate said trains would jeopardize its existence. It is submitted that none of these cases go to this extent; and if the Coast Line case had been submitted on facts similar to the uncontradicted record in this case the decision would not have been the same.

Appellee does not seek to enjoin one rate, or the operation of one train. The orders require the operation of six trains daily, and are in scope more similar to a whole rate schedule than a single rate.

If in 1909 when the Mobile & Ohio Railroad Company put on the first of these trains, there had been an order entered by the Commission requiring said train to be put on, and there had been admitted a necessity therefor, and the general business of the Company had been profitable or could stand the loss caused by that train, then the facts would have been somewhat similar to those in the Coast Line Case. The facts to-day are dissimilar. We have failed to find any case which would require the op-

eration of additional passenger trains if to do so would cause loss, and if there was no general revenue from the entire business out of which the loss could be paid. Why does the Court in all of these cases refer to the fact that the business generally was remunerative? It was because the court would not sustain any order which would be such a burden upon the revenue as to cause ruin to the Railroad Company. If ruin was brought upon the Railroad Company, the order of the Court would have this practical result: It would secure for a time to a certain few patrons of the Company additional facilities, and in doing so would deprive the public generally, as well as these few, of the whole facilities when the loss would cause the operations of the entire road to cease.

Appellee operates its interstate railroad as an entirety. It has but one treasury, and a default in payment of interest on its mortgages and consequent foreclosure thereof would occur from lack of funds in that treasury, and, therefore, the management looked to that one treasury to ascertain if it was necessary to make the retrenchments it made, and if the retrenchment program made necessary was, as shown, made without discrimination against any locality or any State, then the loss in the entire business was the proper element to be considered. As a practical matter the loss in revenue of Appellee was due, as shown by the testimony, to the demoralization of the cotton and lumber markets, the principal producing territory of which on the line of the Mobile & Ohio Railroad was in Mississippi.

These decisions, particularly the Coast Line Case, fully justify the granting of the injunction asked in this case. The Coast Line Case is an authority for the relief sought here. That case holds that the fact that the furnishing of the facility ordered may occasion an incidental loss is an *important* criterion to be taken into view. It also referred several times to the conceded fact that the Coast Line was making money on its business as an entirety, and emphasizes the fact "that the deficiency of facilities must clearly appear to justify an order directing the furnishing of new and additional facilities."

The utmost that can be claimed for these decisions is that they hold that the showing of incidental pecuniary loss is not, standing alone, sufficient justification for the refusal to perform a primal duty. These decisions do not hold that there is any justification, in law, for an order requiring the operation of additional passenger service at an admitted loss when the entire business is falling off to a very marked degree and the actual cash situation was critical, and when the continued operation of the entire business will be jeopardized by the loss occasioned by the additional facility, and when by all the best tests of public need there is no necessity for the additional facilities. Where a road ceases to operate *any* passenger trains, it is clearly abandoning a primal duty. It is, however, it seems to us, a

stretching of the meaning of primal duty to hold that the putting on of an additional passenger train comes within that term, except possibly where the necessity therefor is admitted.

Appellant in its brief from page 12 to the middle of page 26 cites numerous authorities to show that a state may, by proper enactment *not forbidden by its own or the Federal Constitution,* regulate corporations within its jurisdiction, and to show that such legislation, subject to the condition that it be *not* inconsistent with the National Constitution, may be with reference to the public convenience as well as with reference to public health, public morals or public safety. The decisions of this court so hold, and Appellee does not dispute said general rule or attempt to answer said portions of Appellant's brief. We contend that if the Commission in this case had the power to pass the orders, said orders, under the circumstances of this case, *are forbidden by the Federal Constitution.*

As to the statement that the reasonableness of the schedule or convenience cannot be determined until the carrier has made a test showing that there is an actual loss, it is submitted that the proof is that said trains have been in operation for periods of from four years to eighteen months and that no one of them has at any time since it was inaugurated paid its total cost of operation.

V.

Do The Orders Directly Interfere With Interstate Commerce?

This railroad in Mississippi is a part of an interstate railroad running through the states of Alabama, Mississippi, Tennessee, Kentucky and Illinois, and into Missouri. This interstate road has one management, one set of obligations, one Treasury out of which to meet said obligations, one railroad and facilities to operate to earn money. There is no denial of the right of the State to control the property within the state in its relation to domestic matters. It is the duty of the constituted authorities of Mississippi to prevent discrimination in intra-state matters against persons and places in Mississippi. The right to prevent discrimination against Mississippi does not confer upon Mississippi the right by order of the Commission to require a preference in service to Mississippi over other states served. Mississippi could not pass a valid law requiring all the freight cars owned by the Railroad Company to be brought into the State and used between points in Mississippi. The duty of the Company is owed to several sovereignties, and is also owed to the general government.

It is manifest that action on the part of one state should not stand if it was so unreasonable as to prevent the performance of the general duty or if it were so unreasonable as not to force the line to

cease operating but to place a burden upon the general operation or the operation in other states. The courts hold in all cases that a railroad Company cannot justify an unreasonably high rate on domestic business because only in that way is it able to meet losses on its interstate business, per contra, the State cannot justify unreasonably low rates for domestic transportation upon the ground that the carrier is earning large profits on its interstate business. In this case, the attempt is to justify a train service, notwithstanding it is in and of itself a losing proposition. The loss must be made up out of the general revenue which does not exist. The bill in this case contains an averment that under the circumstances the earnings of the Company will not stand a loss and that to force it to continue the operation at a loss will jeopardize its whole operations. If it will, there cannot be a more direct interference with interstate commerce or a greater burden put upon it. Certainly to destroy the ability to operate as an interstate carrier is a greater blow at interstate commerce than to merely interfere with it. The state cannot physically build a wall across the track and prevent the operation of interstate trains. If it cannot do that, it should not be allowed to prey upon the revenue of the Company to such an extent as to make it impossible for the trains to run.

In the *Minnesota rate case,* 230 U. S. p. 401, the Court said:

> "They (the States) have no power to prescribe the rates to be charged for transporta-

tion from one state to another, or to subject the operations of carriers in the course of such transportation to requirements that are unreasonable or pass beyond the bounds of suitable local protection."

A number of cases have been decided by the Supreme Court of the United States touching the validity of orders of the State Railroad Commission directing the stopping of through interstate trains. In the case of *Atlantic Coast Line vs. Wharton,* 207 U. S. 328 at p. 334, the Court says:

"That any exercise of state authority, in whatever form manifested, which directly regulates interstate commerce, is repugnant to the commerce clause of the Constitution is obvious. * * * * * * When, therefore, an order made under state authority to stop an interstate train is assailed because of its repugnancy, to the interstate commerce clause, the question, whether such order is void as a direct regulation of such commerce may be tested by considering the nature of the order, the character of the interstate commerce train to which it applies, and its necessary and direct effect upon the operation of such train. But the effect of the order as a direct regulation of interstate commerce may also be tested by considering the adequacy of the local facilities existing at the station or stations at which the interstate commerce train has been commanded to stop. True, inherently considered, whether there be adequate local facilities is not a Federal question, but insofar as the question of such adequate local facilities is involved in the determination of the Federal

question of whether the order concerning an interstate train does or does not directly regulate interstate commerce, that question for such purpose is open and may be considered by us. 203 U. S., supra." * * * * * * * * *

"The term, 'adequate or reasonable facilities' is not in its nature capable of exact definition. It is a relative expression and has to be considered as calling for such facilities as might be fairly demanded, regard being had, among other things, to the size of the place, the extent of the demand for transportation, the cost of furnishing the additional accommodations asked for, and to all other facts which would have a bearing upon the question of convenience and cost. * * * That the inhabitants of a place demand greater facilities than they have, is not at all conclusive as to the reasonableness of their demand for something more."

The cases involving the right of a Railroad Commission to order an interstate train to stop differ from this. In this case, the railroad company has made all its interstate trains local trains, stopping at all points in order to accommodate the local traffic. The Railroad Commission, not satisfied with that, orders other trains put on between points within the State of Mississippi. The orders do not, therefore, directly physically burden an interstate train. Our contention is that the orders place a burden upon interstate commerce because the orders require the operation of trains which are not self-sustaining. The result being that in order for the Railroad Company to obey, it must take the money it makes from the operation of its railroad generally

including interstate commerce and supply the deficit, and that this jeopardizes the operation of the whole line and thus constitutes a burden thereon.

As was said by the Court in *M. K. & T. vs. Love,* 177 F. R. 494.

> "It is generally the case, as here, that the railroad is but part of a larger system, extending into or through other states, and there are factors of value, revenue and expenses, which though without the State have such relation to and effect upon those within, that they must be regarded in reaching a just conclusion."

> "It must always be remembered that under the Constitution a railroad cannot lawfully be denied a reasonable return upon its property devoted to public use, and if by the scope of its operations several sovereignties are interested, the special insistence of the officers of one should not be allowed to cast an undue burden on the others."

When the special insistence of a State does cause an undue burden on the others, it is a burden on interstate commerce.

This court in *Railroad Commission Cases,* 116 U. S. 307, at p. 334, after referring to the rule that a corporation is not relieved entirely from state regulation because of incorporation by other states, and after stating that Mississippi could govern this corporation in respect to all things which had not been

placed by the Constitution of the United States within the exclusive jurisdiction of Congress, said:

> "Under this rule nothing can be done by the Government of Mississippi which would operate as a burden on the interstate business of the Company, or impair the usefulness of its facilities for interstate traffic. It is not enough to prevent the State from acting that the road in Mississippi is used in aid of interstate commerce. Legislation of this kind to be unconstitutional must be such as will necessarily amount to or operate as a regulation of business without the State as well as within."

VI.

The Orders Interfere With An Instrument Of The U. S. Government.

Section 3964 of the United States Constitution constitutes this Railroad and other railroad post roads. The State has no right to put such a burden upon the road as will destroy its ability to live as a road and continue to serve the Government. If the Legislature of Mississippi were to pass an act requiring this Company to handle free all passengers or all native grown products, and to do so would cause the road to go into bankruptcy followed with the deterioration of its roadbed in such a manner as to destroy its usefulness as an interstate road, the Act would certainly interfere with this railroad made a post road by act of Congress. To require the Railroad to operate trains at a loss is to require

it to furnish some part of the service for nothing. The difference between that and requiring the Railroad to handle passengers free is merely one of degree. The burden is none the less violative of the Constitution, because on the income instead of the physical property. A state cannot tax interstate commerce, or the right to do Governmental business. To require these trains to be operated at a loss is the equivalent of placing a tax equal to the deficit on the general interstate business.

In the case of *Railroad v. Peniston*, 18 *Wallace*, p. 29, 21 Law Ed. 787, the Court, in referring to the charter provisions of the Union Pacific Railroad, said:

> "They all look to a purpose of Congress to secure an Agency competent and under obligation to perform certain offices for the general government."

The Court also expressly declared that the fact that the corporation in the case of Thompson v. Railway Company dealt with a corporation incorporated by the Legislature of the State presented no reason for the application of a rule different from the general rule.

It then said:

> "As was said in *Western v. Charleston*, 2 Peters 466, they, (meaning the States) cannot by taxation or otherwise, retard, impede, bur-

den, or in any manner control the operation of the Constitutional laws enacted by Congress to carry into execution the powers vested in the General Government'. The implied inhibition, if any exists, is against such obstruction, and that must be the same whether the corporation whose property is taxed was created by Congress or by a State legislature."

VII.

Do The Orders Impair The Obligation Of A Contract?

The United States Government granted to the State of Mississippi a large acreage of land to aid in the construction of a railroad from Mobile to a point near the mouth of the Ohio River. The Legislature of Mississippi granted the land to the Mobile & Ohio Railroad Company. Section 4 of the grant by Congress made this Complainant a public highway for the use of the United States Government without charge for the transportation of troops and property of the United States. The Courts hold that a grant of land to the State upon certain conditions and the acceptance of the grant by the State constitute a contract which cannot be violated by the State's legislation. Plaintiff contends that the orders of the Commission jeopardize its existence and its ability to carry out said contract.

In McGehee vs. Mathis, 18 Law Ed. 314, at p. 318, the Court said:

"It is not doubted that the grant by the United States to the State upon conditions, and the acceptance of the grant by the state, constituted a contract. All the elements of a contract met in the transaction—competent parties, proper subject-matter, sufficient consideration, and consent of minds. This contract was binding upon the state, and could not be violated by its legislation without infringement of the Constitution."

In Pearsall vs. Great Northern Railway Company, 161 U. S. Rep. 646, at pp. 661-665, the Court said:

"Subsequent cases have settled the law that, wherever property rights have been acquired by virtue of a corporate charter such rights, so far as they are necessary to the full and complete enjoyment of the main object of the grant, are contracts, and beyond the reach of destructive legislation. Even before the Darrmouth College case was decided, it was held by this court that grants of land made by the Crown to colonial churches were irrevocable, and that property purchased by, or devised to them prior to the adoption of the Constitution, could not be diverted to other purposes by the States which succeeded to the sovereign power of the colonies." p. 661.

"Nor does it follow, from the fact that the contract evidenced by the charter cannot be impaired, that the power of the legislature over such charter is wholly taken away, since statutes which operate only to regulate the manner in which the franchises are to be exercised, and which do not interfere substantially with the

> enjoyment of the main object of the grant are not open to the objection of impairing the contract." p. 665.

In *United States v. Union Pacific Railroad Company,* 98 U. S. page 613, the Court, after declaring that the Company had been organized under and owed its corporate existence to the Act of Congress, proceeded to say:

> "The Government, however, holds another very important relation, namely, that of contract. It has loaned to the Company $27,000,000.00 and granted to it on certain terms many million acres of land. The Government is paying all the time a semi-annual interest on its bonds, loaned to the company. The Company is bound by contract to pay them, principal and interest, at their maturity. The Government by the contract has a lien on the road and its appurtenances to secure this payment. The company is also bound by the contract to perform for the government all the transportation and telegraphing that may be required of it, and to keep its road and line always in order and readiness to render these services."

The claim made on behalf of Appellee is that the orders would force it to lose a large sum of money and the result would be a substantial interference with the main object of the grant of the lands by the Government, viz., to operate a post road and carry the United States mail at a reduced price.

VIII.

Is The Present Passenger Service Adequate?

The decisions and text writers say, "the duty of the railroad company to operate its road requires it merely to meet the public wants and exigencies." The best test, if not the only correct method of testing the need of an additional facility, such as a passenger train, is whether or not a sufficient number of people claim the right to use the train, at the statutory rate, to pay the cost of operation and a fair profit.

There is a general duty on the part of railroad companies to receive and carry passengers. That duty existed in 1848, when this railroad was chartered. It could not be claimed that there was any duty in 1848 to run four passenger trains each way each day, because of two facts: the first was that there was no demand on the part of the people for such a number of trains, and the second was that the railroad company was not physically or financially equipped to so operate. The duty to-day is not what it was twenty years ago. It arises and is governed by the volume of business offering. To say that if there were a duty to run four passenger trains that there never could be a lesser duty would be manifest error. Those trains were operated on this road when the finances permitted, even though the volume of traffic did not fully warrant.

The affidavits from all of the towns except Me-

ridian show that those towns do not regard the present facilities inadequate. The affidavits taken by the Commission of citizens of Meridian, Mississippi, show that the business of Meridian would be injured if the trains would be taken off.

There was not, however, at Meridian any unanimous demand for the restoration of the trains under the circumstances of this case. (The affidavit of R. V. Taylor shows the contrary.) Those people who testified that they thought that the service was inadequate, themselves cut down their expenses because of the reduced volume of business.

The State of Mississippi should not be permitted to say to the Railroad Company: "Heretofore you have rendered a certain quality and quantity of service, for which we have paid you a certain amount. Hereafter you must continue to furnish the same quality and quantity of service and we will pay you an amount therefor much less than heretofore." The statement is proof sufficient of the inequity of the proposition.

In a number of cases the Courts have held, with reference to rates that they should be given a test. We are not at variance with that in this case, because the question of whether these trains will pay or not has been tested, in one case five years, and in no case less than eighteen months, and the unimpeached direct statement is made, corroborated by the earnings of the trains, that no one of them has paid.

It must be remembered that the duty owed by the Railroad Company is to the public, and an in-

dividual has no right to demand that a train be run to suit his convenience. The individual secures whatever right he has by virtue of his being one of the public or the community, and the duty to the community does not arise unless a sufficient number of the public demand the right to create it. This is the generally accepted rule.

Adequacy must be viewed from the standpoint not only of the citizen but from the standpoint of the railroad. What is adequate service when there is a great business depression might be inadequate when the finances of the Company would permit an enlargement of the service, without too great sacrifice of its general revenue.

In 12 Gray 180, the test of the question of adequacy or inadequacy of service is dealt with in this language:

> "Mandamus was refused to compel the running of passenger trains over a branch road on which this had been discontinued, after running them for a time, because they were unprofitable. The question is not as to the existence of the duty, but as to the extent and qualifications. The duty of a railroad company is not more than to meet the public wants. If trains are run at reasonable and moderate fares, and cannot be supported, it is because they are not needed."

The reasonableness of the orders should be a controlling factor. These orders should be enjoined on the ground of unreasonableness.

In *Minneapolis, St. P. & S. S. Marie, Ry. Co. vs. Railroad Commission* of Wisconsin, June 5th,

1908, 17 L. R. A., N. S. 821, 116 N. W. 905, the Court said:

> "In determining whether or not the order of the Commission is unreasonable, it must also be considered that every unnecessary burden imposed upon the railroad impairs its net receipts and diminishes that margin, if there be one, between the amount sufficient to assure a fair return on the value of its property, plus the amount of its fixed charges and operating expenses, and its gross receipts. In this margin the public and the railroad are interested, because it is only when this exists that betterments in construction, or improvements in service not imperative or indispensable, or reduction in rates, will ordinarily be voluntarily made by the railroad, or can ordinarily be ordered or enforced by the commission. We are not now speaking of these extreme cases where the public duty must be discharged, whatever the financial consequences to the railroad. Covington & L. Turnp. Road Co. vs. Sanford, 164 Sup. Ct. Rep. 198, and cases in Rose's Notes; 3 Cook, Corp, 4th ed. Secs. 900, 901, and cases in notes. But, in ordinary cases, to waste this margin is to waste the fund in which the whole public is interested. *This should never be done for the benefit of the few, as against the interests of many.*" 832. (Italics the writer's).

In the case of *State of Iowa vs. Old Colony Trust Co.*, decided by the Circuit Court of Appeals for the Eighth Circuit, April 1st, 1914, 215 F. R. p. 307, this being a case in which an order was given directing Receivers to abandon and dismantle a por-

tion of a railroad, and the State of Iowa and others appealed from the order, the Court said, at p. 312:

> "A railroad corporation is in an important sense a public corporation. It is dependent upon the public for its franchises to exist and carry on business, and in consideration of these franchises it assumes and must perform certain duties and obligations for the benefit of the public. Among them, as a general rule, is the duty of maintaining its entire line of road in a reasonably safe and operative condition and for a fair consideration to carry passengers and freight over it at all times whenever requested to do so. These propositions are elemental and lay down a general rule which cannot be gainsaid or denied. But there are some conditions which necessarily excuse full compliance with the requirements of these rules, and, in our opinion, the present case affords a case affords a striking example of such conditions. Here is a case where the line sought to be abandoned, is not only not self-supporting, but its continued operation jeopardizes the successful operation of the entire system of which it is merely a part. Moreover, its continued operation in its present condition is dangerous to life and property and there is no money or financial ability to improve its condition. Not only so, but there is little public necessity for its continued operation, whereas, there is a great public necessity for the continued operation of the balance of the system.
>
> "In such circumstances the railroad company may abandon such an unprofitable and irreclaimable part of its road and neither the state nor unfortunate investors along the

line can justly complain. They cannot force a railroad company to do the impossible. Jack V. Williams, (C. C.) 113 Fed. 823; Id. 76 C. C. A. 165, 145 Fed. 281; Commonwealth vs. Fitchburg Railroad Co. 12 Gray (Mass) 180; People vs. Albany & Vermont Railroad Co., 24 N. Y. 261, 82 Am. Dec. 295; Morawetz on Private Corporations, 1119."

In the case of *Jack vs. Williams,* 113 Fed. Rep., p. 823, it appeared that twelve miles of a railroad were built. The Construction Company then became insolvent and was placed in the hands of a Receiver. The Railroad Company itself was placed in the hands of a Receiver. The Receiver completed the line under certificates for three miles further. Finally the road bed and the railroad decayed and were unsafe. A sale was ordered and eventually the purchasers took up the rails. The question was whether the court could authorize the abandonment of the road. The court said:

"A railroad is in a sense a public concern. To its construction and operation the action of the sovereign is needed. If a corporation is created, the franchise to be a corporation can be given only by the sovereign. Its franchise as a common carrier for hire of passengers and freight comes from the sovereign. Its right to exercise the right of eminent domain can come only from the sovereign. And, as its road is in a sense a highway, the sovereign grants that also. The consideration for these acts of the sovereign is the utility of the enterprise to the public. To be thus useful to the public, the road must be

kept up in such a condition that life and property both must be made as safe as practicable. The rates of transportation of persons and freight must be reasonable. And the reasonable number of trains must be kept up, dependent upon the circumstances surrounding the railway. Whilst thus serving the public, however, no corporation or private person is obliged to continue the service without a reasonable remuneration. No one can be compelled to serve the public for nothing. Private property of no kind, including railroad property, can be used for public purposes without compensation. Smyth vs. Ames, 169 U. S. 467, 18 Sup. Ct. 418, 42 L. Ed. 819; Road Co. vs. Sanford, 164 U. S. 578, 17 Sup. Ct. 198, 41 L. Ed. 560; Chicago, M. & St. P. R. Co. vs. Minnessota, 134 U. S. 418, 10 Sup. Ct. 462, 33 L. Ed. 970; Railway Co. vs. Smith, 173 U. S. 684, 19 Sup. Ct. 565, 43 L. Ed. 858. All these cases determine that a railroad company, in the full enjoyment and use and capacity to use its franchises, cannot be compelled to exercise its franchises without reasonable remuneration. A fortiori a railroad corporation, or a person owning a railroad, cannot be compelled to operate that road, not only without remuneration, but at a loss. And this not by any means because such corporation or person is insolvent. If a citizen has the wealth of the Rothchilds, he cannot be compelled to use a dollar of his wealth for public purposes without compensation. What, then, is a person to do who becomes possessed of wholly in the case at bar several distinct efforts to sell unproductive railroad property? Sell it? But had been made, and made in vain. No bid whatever had been made except by these purchasers. The public—even that portion of the public on

the line of the road—could not be induced to make a bid on it. Repair it and put it in condition? But experience had shown that even when it was a new road, requiring no expense for repairs, it barely paid operating expenses. Could the state or the public, in the face of the fourteenth amendment, compel such an expenditure involving certain loss? Evidence has been introduced of persons who are of the opinion that the road would pay. Can such testimony override the result of actual experience? It appears also in evidence that, notwithstanding the existence of this road, dealers in cotton and farmers preferred to carry their cotton to market in wagons, rather than to ship it by rail. The difference of cost must have been small. But, small as it was, the people about the road evidently estimate the general advantage of the road at a sum still smaller. Under these circumstances, what other course could have been pursued? The roadbed was in such a condition that it could not be operated. The expenses attending its repair held out no hope of remuneration. The purchasers had lost the privilege of incorporation and retention of the franchise. They owned the property. Was it to be kept idle and useless, or could they dismantle it?" p. 827, 828.

The Court in the *Jack case supra* quoted from the case of *Kansas vs. Dodge City, M. & T. R. Co.*, 24 L. R. A. 564, as follows:

"The order prayed for should only be issued in the interest of the public. If the track is replaced there is no reasonable probability that the road will be or can be operated. If a railway will not pay its mere operating ex-

penses, the public has very little interest in the operation of the road or in its being kept in repair." p. 829.

"In Com. vs. Fitchburg R. Co., 12 Gray, 180, mandamus was refused to compel the running of passenger trains over a branch road on which this had been discontinued, after running them for a time, because they were unprofitable. The question is not as to the existence of the duty but as to its extent and qualifications. The duty of a railroad company is not more than to meet the public wants. If trains are run at reasonable and moderate fares, and cannot be supported, it is because they are not needed."

Morawetz on Private Corporations says this:

"The duty of a railroad company to operate its road requires it merely to meet the public wants and exigencies. If there is not sufficient traffic over a particular line of road to pay for the expense of running trains, this is sufficient evidence that the public do not require it to be kept in operation. In such case the Company may cease operating the road, unless this be contrary to the express terms of the Charter." Mor. Priv. Corp. 1119.

The Court in the *Jack Case,* 113 F. R., quoted as follows:

"This is sustained in *Ohio & M. R. Co. vs. People* (Ill.) 11 N. E. 350. In *Coe vs. Columbus, P. & I. R. R.* (Ohio) 75 Am. Rep, 524, the Court says:

"If we are at liberty to suggest on what the legislature very probably relied for the contin-

ued operation of a railroad, once constructed, we should say it was the interest of the owners. If it can be operated profitably, the interest of those concerned will rarely, if ever, fail to keep it in operation so as to subserve the public use. If it cannot, we know of no mode by which the state can compel those by whom it was constructed to operate it at a loss, and certainly there is no mode provided by which it can be operated at the risk of the state."

The case of "*State of South Carolina vs. Jack*" *Supra,* was appealed and affirmed in the 145th Fed. 281. On page 286 the Court says on this point:

> "As adverted to by the circuit judge, the power given by the charter was in terms permissive to build the railroad, and not mandatory to maintain it. When the condition is such as existed when the 15 miles of the rails were removed, it has been held that the owners of the road cannot be compelled to reconstruct and maintain it when it would not be remunerative. Northern Pacific R. R. vs. Dustin, 142 U. S. 492-499, 12 Sup. Ct. 283, 35 L. Ed. 1092. The fact that the road does not pay the expenses of running the trains is pursuasive evidence that the service to the public does not require it to be kept in operation." p. 286.

These last quoted decisions set forth the exceptions to the general rule, not denied, that a common carrier is under an absolute duty to operate its road; the exception being that if to operate it would mean absolute loss and jeopardize the continued operation of the whole, and there is no charter obligation

to continue, then the operation may cease. This is true whether you reach the conclusion by holding that to continue to operate would take property without due process of law, or by holding that the duty to continue is only to meet the public demands, and if the demands are not sufficient to pay the cost, then as a matter of law, the public demand does not exist.

The last line of decisions is referred to in order to show that in the extreme case of abandonment of a Railroad the Courts have measured the duty to operate by ascertaining if the public in sufficient numbers use the Railroad to pay the Company a reasonable remuneration.

IX.

Facts Do Not Even Tend to Sustain the Orders for the Six Trains.

Notwithstanding six trains were ordered operated, the testimony before the Commission, and before the Court, has never tended to show the slightest necessity for but one additional train each way, and that to be operated south of Meridian, Miss. We submit, however, that the power did not lie in the Court to substitute its judgment as to which one of the train or trains is required for that of the Commission. The Court may not select between the orders. It is confined to ascertaining whether the six orders are so unwarranted as to exceed regulation and amount to confiscation. The injunction sought

is against six orders. The six orders were entered as the result of one citation, one hearing and one judgment, and we submit that the orders should stand or fall together.

The Court is not precluded from going into the question of adequacy of the facilities. Many cases, one of which was the *A. C. L. R. R. vs. Wharton,* 207 U. S. 328, at p. 334, have held that while inherently the question of adequacy of local service is within the jurisdiction of the state commission, still since the determination of the question of violation of the Constitution of the United States depends upon the question of fact, the Court has a right to determine the fact, and is not precluded by the finding of the Commision.

In addition to this, if the Commission has not considered certain evidence under a mistaken idea of the law, it would be entirely competent for the Court to review that feature of the decision. The Commission, it is submitted, did, under a mistaken idea of law, fail to consider proper items of cost which should go into the figure of the operating expense of the trains; as is shown from the testimony of F. M. Sheppard, President of the Railroad Commission of Mississippi. (Rec. pp. 129-132).

Dr. Sheppard testified that he did not think the Railroad Company should be required to run the said passenger trains if they did not pay the operating expenses. In answer to the Court's questions he stated that by operating expenses he meant just the actual cost of operating, such as wages of train employees, oil, supplies, etc., on that one train, and that

he would not include in his calculation anything for stock killed, or any station expenses, or any part of the general burden. He further testified that he thought *one* additional train between Waynesboro and Okolona would pay a revenue of more than forty cents per train mile, (Rec. p. 131), this figure of forty cents per train mile being sufficient, in the opinion of the Commissioner, to pay the operating cost per train mile. This witness for the Commission, who was the President of the Commission, stated that the Commission did not think the trains should be operated if they failed to pay their operating expenses. If we measure the right to require the operation of these trains by the standard fixed, then none of them should have been ordered put in operation. The fact that the Commission had an erroneous idea as to what were proper items to be included in operating costs does not change the standard agreed to.

Mississippi Should not be Allowed to Secure a Preference through the Order.

This case illustrates pointedly the need of control of an interstate railway by a single National board having a comprehensive view of the demands and requirements of the several states and communities through which the carrier operates, and a like view of the duties the interstate carrier owes to each and to decide between "the sometimes conflicting interests of local and through traffic."

If there was good reason for continuing to

operate said trains in Mississippi, there was better reason for continuing the operation of these and other trains in other states, and if the railroad company had restored the trains in Mississippi and had not done so in the other states, which had consented to the withdrawal, it would have been rank discrimination against the other communities. To permit one State to provide the conveniences of travel for its citizens regardless of the rights of citizens of other states is wrong.

The trains were taken off because of an imperative need of saving money. If taking them off resulted in a loss of revenue, as claimed by the State it is manifest that they would not have been discontinued.

The record discloses that Appellee's gross revenue was falling off at the rate of $10,000.00 per day, which would amount to approximately $3,500,000.00 per annum, an enormous sum for a road the size of Appellee. It further discloses that on September 30th, 1914, there was $74,000.00 in cash in the treasury and over a million dollars of audited vouchers awaiting payment; and further that for the three months of July, August and September 1914, the Company's earnings lacked $127,000.00 of paying the fixed charges and taxes after paying operating expenses. It is difficult to see how a situation could be more critical from a business standpoint.

Confronted with this situation the Management of the Railroad Company laid out a program of economy. Every branch of service was reduced;

shops were closed, and the salaries of officials and others were reduced. The only way to reduce passenger expenses was a reduction of trains. Freight expenses reduce themselves automatically as tonnage decreases, but passenger trains have to be operated just the same for one passenger as they do for a hundred.

The Management of this interstate railroad owes a duty to the entire public it serves as well as its stockholders, and if in the conservation of its resources during a time of panic it honestly decides to reduce the luxuries of travel, not the necessities of travel, especially when the luxuries were being operated at a loss, and especially when this reduction was but a part of a general scheme of reduction, it ought, it is submitted, be allowed to exercise its judgment. If the orders had been allowed to stand the result would have been that the judgment of the Railroad Commission of Mississippi, based upon an erroneous standard, erroneously applied in a mistaken effort to aid one community in disregard of the rights of all other communities in the State of Mississippi and all other communities in all other states through which Appellee operates, and in utter disregard of the rights of Appellee, would be substituted for Appellee's judgment and the acquiesence in that judgment by the other States through which Appellee operates.

We submit that the interlocutory injunction should have been granted against said orders for the following reasons:

(1) The Commission is no where given au-

thority to make such an order, and to enforce it deprives Appellee of the equal protection of the laws, and of its property without due process of law.

(2) No one of the trains ordered operated pays its cost of operation, and Appellee is losing money on its entire business, and to enforce the orders under existing conditions will deprive Appellee of its property without due process of law.

(3) The orders, if enforced, would directly burden interstate commerce, and this Governmental agency, in that the burden of the loss incurred in operating the trains would be a tax on the income from interstate commerce, and would jeopardize the existence of this carrier as an interstate carrier and post road.

(4) The orders, if enforced, would, by destroying Appellee, impair the obligation of that contract between the United States Government, the State of Mississippi and the Mobile & Ohio Railroad Company, whereby Appellee was to remain a post road, etc.

(5) Because the passenger service now being operated is adequate, and the orders are so unreasonable as to be void.

The exercise of the judicial discretion of the Lower Court in granting the interlocutory injunction should be affirmed.

Respectfully submitted,

S. R. PRINCE,
CARL FOX,
Attorneys for Appellee.

APPENDIX

AN ACT.

TO INCORPORATE THE MOBILE AND OHIO RAILROAD COMPANY.

SECTION 1. Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened, That Jonathan Emanuel, George N. Sewart, Moses Waring, Sidney Smith, John Bloodgood, Miguel D. Eslava, Samuel G. Fisher, Charles LeBaron, John A. Campbell, Archibald W. Gordon, Charles Gascoigne, Phillip Phillips, John C. Whitsett, and M. J. D. Baldwyn, with such other persons as shall associate with them for that purpose, are constituted a body politic and corporate, by the name of the Mobile and Ohio Railroad Company; and by that name to sue and be sued, plead and be impleaded, in any court of this State; to make and have a common seal, and the same to break, alter or amend at pleasure; and the company is hereby vested with all powers, privileges and immunities which are, or may be, necessary to carry into effect the purposes and objects of this act, hereinafter set forth; and said company is hereby authorized and empowered to locate, construct and finally complete a single, double or treble rail road or way, from some suitable point in the city of Mobile, in a western or northwesterly direction, to the west line of this State, towards the mouth of the

Ohio river, in such route as shall be deemed most expedient; and to transport, take and carry property and persons upon said rail road, or way, by the power and force of steam, or animals, or of any other mechanical or other power, or any combination of them, which said company may choose to apply; and for the purpose of constructing said rail road or way, the said company is hereby authorized to lay out their road not exceeding one hundred feet wide, through the whole length, and for the purpose of depots, cuttings and embankments, and for the purpose of necessary turnouts, and for obtaining stone and gravel, may take as much more land as may be necessary for the construction and security of said road, with permission to make any lawful contract with any other rail road corporation in relation to the business of said company, and also to make joint stock with any other railroad corporation: Provided, that all damages that may be occasioned to any person or corporation by the taking of any such land or materials aforesaid, for the purpose aforesaid, shall be paid for by said company, in manner hereinafter provided.

SECTION 2. And be it further enacted, That the capital stock of said company shall not exceed ten millions of dollars, to be divided into shares of one hundred dollars each, which shares shall be deemed personal property, and be transferred in such manner, and at such places, as the by-laws of said company shall direct; Provided, that said company may commence the construction of said road, with all the

powers and privileges contained in this act, whenever the sum subscribed to the capital stock shall exceed two hundred and fifty thousand dollars.

SECTION 3. And be it further enacted, That the persons named in the first section, or a majority of them, shall open books to receive subscriptions to the capital stock of said company, at such times and places as they, or a majority of them, may appoint; and shall give such notice of the times and places of opening said books, as they may deem reasonable; and shall receive said subscriptions under such regulations as they may adopt for the purpose; and if more than five thousand shares of stock shall be subscribed, they shall have the power to make the shares so subscribed the capital stock of said company: Provided, they shall not exceed one hundred thousand shares. And in case the subscription shall exceed one hundred thousand shares, the same shall be reduced, and apportioned in such manner as may be deemed most beneficial to the corporation.

SECTION 4. And be it further enacted, That the immediate government and direction of the affairs of said company shall be vested in a board of thirteen directors, who shall be chosen by the stock holders of said company, in the manner hereinafter provided, and shall hold their office until others are duly elected and qualified to take their places as directors; and the said directors, seven of whom,(the president being one,)shall be a quorum for the transaction of business, shall elect one of their number to be President of the Board, who shall also be Presi-

dent of said Company; they shall also choose a Secretary, and such other officers as they may deem necessary, and Treasurer, who shall give bond, with security, to said company, in such sum as the said directors may require, for the faithful discharge of his trust.

SECTION 5. And be it further enacted, That the persons authorized by the third section of this act, to open the books for subscription to the capital stock, are hereby authorized, after the books of subscription to the capital stock of said company are closed, or when the sum subscribed shall exceed two hundred and fifty thousand dollars, to call the first meeting of the stockholders of said company, in such way, and at such time and place, as they may appoint, for the choice of Directors of said company; and in all meetings of the stockholders of said company, each share shall entitled the holder thereof to one vote, which vote may be given by said stockholder in person, or by lawful proxy; and the annual meeting of the stockholders of said company, for the choice of directors, shall be holden at such time and place, and upon such notice, as the said company, in their by-laws, may prescribe.

SECTION 6. And be it further enacted, That in case it shall so happen that an election of directors shall not be made on any day appointed by the by-laws of said company, said company shall not for that cause, be deemed to be dissolved, but such election may be holden on any day which shall be ap-

pointed by the directors of said company; and said directors shall have power to fill any vacancies which may occur by death, resignation, or otherwise.

SECTION 7. And be it further enacted, That the directors shall have full power to make and prescribe such by-laws, rules and regulations, as they shall deem needful and proper, touching the disposition and management of the stock, property, estate and effects of said company, not contrary to this charter, or the laws of this State, or of the United States; the transfer of shares, the duties and conduct of their officers and servants; touching the election of and meeting of the directors; and all matters whatsoever which may appertain to the concerns of said company. Said company is also hereby authorized to purchase, receive and hold such estate as may be necessary and convenient in accomplishing the object for which this incorporation is granted, and may by their agents, surveyors, engineers, and servants, enter upon all lands and tenements through which they may deem it necessary to make said road, and to survey, layout, and construct the same, and to agree and contract for the land, or right of way, with the owners, through which they may intend to make the said road. In case said lands belong to the estate of any deceased person, then with the executor or administrator of such; or in case of the same belonging to a minor, or person non-compos mentis, then, with his or her guardian or guardians; or in case said lands be held by trustees of school sections, or other trustees of estates, then

with such trustees; and the said executors, administrators, guardians and trustees are hereby declared competent for such estate, or minor, to contract with said company for the right to use, occupy and possess the lands of such estates, minors or trustees, so far as may be useful or necessary to the purposes of said rail road; and the act and deed of such executors, administrator, guardians or trustee, in relation thereto, shall pass the title in said land in the same manner as if the said deed or act was made or done by a legal owner, of full age; and such executor, administrator, guardian or trustee, shall account to those interested, upon their respective bonds, for the amount paid him in pursuance of such agreement and composition; and if the said company and parties representing lands prefer, they may refer the question of compensation to arbitrators, mutually chosen, whose award, or that of their umpire, in case of disagreement, shall vest title according to its terms.

SECTION 8. And be it further enacted, That if the said company cannot agree with the owner of the land, through which they desire said road to pass, or with the executor, administrator, guardian or trustee, it shall, and may be lawful, for the clerk of the circuit court of the county in which said land lies, on the application of said company, or its agents, and he is required to issue a writ of ad quod damnum commanding the sheriff, that without delay he cause a jury of six good and lawful men to be upon such land on a day to be by said sheriff fixed

and appointed, and whereof it shall be his duty to give notice to the owner, executor, administrator, guardian or trustee, at least five days before such day, if they be within his county; or if not, or if the owner or owners be unknown, then notice shall be given by advertisement, to be by said sheriff posted and fixed at the dwelling house, if such there be, or in a public and conspicuous place, at least five days before such appointed day, and also by advertising the same in some newspaper published nearest the land, at least three weeks by weekly insertions, prior to said day; and then cause said jury, after being duly sworn by said sheriff, or justice of the peace, to make true inquest of the damage, that will be sustained by such owner or estate, by reason of making said road through such land. If any such juror shall fail to appear, or by reason of challenge for cause, or otherwise fail to sit on said inquest, the said sheriff shall fill said jury from the by standers, and if they fail to render a verdict, the said sheriff shall again on the same or a subsequent day, empannel a new jury or jurors, until a verdict be had, such verdict and inquest, regularly certified by such sheriff, shall be returned to the office of the clerk of the circuit court of the county in which said land may be, and there remain among the records; and such verdict shall vest in said company the right to occupy and use such land for the purposes of said rail road, on the payment, or tender of payment of the damages thereon assessed, against said company; and in case of persons absent, or unknown as

aforesaid, the placing of the amount of such damages, to the credit of the owner, in the hands of the judge of the county court of the county in which such lands may lie, shall be deemed, and taken as payment; and such judges shall be liable on their bonds, to make due payment of said money on demand.

SECTION 9. And be it further enacted, That it shall be the duty of the sheriff, to appoint and hold said inquest within ten days after the receipt of said writ of ad quod damnum, except in cases of absence aforesaid, in which case, thirty days shall be allowed him, and five days in addition are allowed him for every additional jury which he may have under said writ; and for every default therein, the said sheriff shall be fined by the circuit court, at the instance of either party, not less than twenty nor more than one hundred dollars; and every juror and witness summoned, shall be fined not less than ten dollars for non-attendance; of all such fines, as well as costs, the circuit court of the county shall have jurisdiction. There shall be allowed the following fees: to the clerk of the circuit court, for every writ of ad quad damnum, seventy-five cents: for receiving and filing inquest, seventy-five cents; to the sheriff for giving notice, seventy-five cents, besides printer's fees not exceeding two dollars in each case; for holding inquest five dollars; and for summoning witnesses, twenty-five cents each; to jurors seventy-five cents per diem, each; which fees are not allowed until a verdict be returned and filed, and shall be taxed in the bill of

costs, and paid by the company; provided, however, that before the application for said writ, the said company may make a tender to the owner or owners of any such land, a sum of money, by them deemed equivalent to the damage to be sustained, and upon refusal to accept the sum tendered, and a verdict for the same amount or a less sum, the costs shall be taxed to, and paid by the owners of the land, upon which inquest is held.

SECTION 10. And be it further enacted, That said company is hereby authorized to construct, erect, build, and use a single, double or treble railway, or road, of suitable width and dimensions to be determined by the directors of said company, on the line or course by them designated, and also, under the same rules, regulations and restrictions, and with the like privileges and immunities, as are herein granted to the main rail road, to build and construct branch rail roads on either side of the main road, not exceeding thirty miles, and shall have power to regulate the time and manner in which goods and passengers shall be transported, taken and carried on the same, and shall have power to erect and maintain toll houses and other buildings for the accommodation of their concerns, as they may deem suitable for their interests.

SECTION 11. And be it further enacted, That whenever it shall be necessary for the construction of their single, double, or treble rail road or way, to intersect or cross any stream of water or water course, or any road or highway, it shall be lawful

for said company to construct across or upon the same; but the said company shall restore the said stream or water course or road or highway thus intersected to its former state, or in sufficient manner not to impair its usefulness, and in all cases where any road or public highway is so located, that said rail road cannot be judiciously laid out and constructed across or upon the same, without interfering therewith, in such case or cases said corporation may, by their engineer, cause such road or roads to be changed or altered in such manner, that said rail road may be made on the best site of ground for that purpose: Provided, said corporation shall put such road in as good repair as at the time of changing or altering the same.

SECTION 12. And be it further enacted, That it shall be lawful for the company hereby incorporated, from time to time, to fix, regulate, and receive the toll and charges by them to be received, for transportation of persons or property, on their rail road or way aforesaid, hereby authorized to be constructed, erected, built or used, or upon any part thereof.

SECTION 13. And be it further enacted, That if any person or persons will, or shall wilfully do or cause to be done any act or acts whatsoever, whereby any building, construction or works of said company, or any engine, machine or structure, or any matter or thing appertaining to the same, shall be stopped, obstructed, impaired, weakened, injured or destroyed, the person so offending, shall be deemed

guilty of a misdemeanor, and shall forfeit and pay to said company, double the amount of damages sustained by reason of such offences or injury, to be recovered, in the name of said corporation, with costs of suit by action of debt.

SECTION 14. And be it further enacted, That the directors of said company may require the payment of the sum or sums subscribed to the capital stock of said company, at such times and in such proportions, and upon such conditions as they may deem fit; and in case any stockholder shall refuse or neglect to make payment pursuant to the requisition of the board of directors, the stock of such stockholder, or so much as shall be necessary, may be sold by the directors of said corporation at public auction, after the lapse of ninety days, from the time when the payment became due, and the surplus money, the avails of such sale, after deducting the payment due, and interest thereon, and the necessary expenses of sale, shall be paid over to such delinquent stock holder.

SECTION 15. And be it further enacted, That the property owned by the said company shall, at all times be subject to taxation, in the same manner, and to the same extent, as similar property owned by private individuals.

SECTION 16. And be it further enacted, That if the railroad shall not be commenced in five years from the passage of this act, and shall not be finished within this State, in ten years from the time of the

commencement thereof, then this act shall be null and void.

Approved, Ferbuary 3, 1848.

AN ACT TO INCORPORATE THE MOBILE AND OHIO RAILROAD COMPANY.

Whereas, the State of Alabama, by an act approved 3d February, A. D. 1848, enacted as follows:

SECTION 1. Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened, That Jonathan Emanuel, George N. Sewart, Moses Waring, Sidney Smith, John Bloodgood, Miguel D. Eslava, Samuel G. Fisher, Charles L. Banon, John A. Campbell, Archibald W. Gordon, Charles Gascoigne, Phillip Phillips, John C. Whitsett, and M. J. D. Baldwyn, with such other persons as shall associate with them for that purpose, are constituted a body politic and corporate, by the name of the Mobile and Ohio Railroad Company; and by that name to sue and be sued, plead and be impleaded, in any court of this State; to make and have a common seal, and the same to break, alter or amend at pleasure; and the company is hereby vested with all powers, privileges and immunities which are, or may be, necessary to carry into effect the purposes and objects of this act, hereinafter set forth; and said company is hereby authorized and empowered to locate, construct and finally complete a single, double or treble rail road or way, from some suitable point in the city of Mobile, in a western or northwesterly direction, to the west line of this State, towards the mouth of the

Ohio river, in such route as shall be deemed most expedient; and to transport, take and carry property and persons upon said rail road, or way, by the power and force of steam, or animals, or of any other mechanical or other power, or any combination of them, which said company may choose to apply; and for the purpose of constructing said rail road or way, the said company is hereby authorized to lay out their road not exceeding one hundred feet wide, through the whole length, and for the purpose of depots, cuttings and embankments, and for the purpose of necessary turnouts, and for obtaining stone and gravel, may take as much more land as may be necessary for the construction and security of said road, with permission to make any lawful contract with any other rail road corporation in relation to the business of said company, and also to make joint stock with any other railroad corporation: Provided, that all damages that may be occasioned to any person or corporation by the taking of any such land or materials aforesaid, for the purpose aforesaid, shall be paid for by said company, in manner hereinafter provided.

SECTION 2. And be it further enacted, That the capital stock of said company shall not exceed ten millions of dollars, to be divided into shares of one hundred dollars each, which shares shall be deemed personal property, and be transferred in such manner, and at such places, as the by-laws of said company shall direct; Provided, that said company may commence the construction of said road, with all the

powers and privileges contained in this act, whenever the sum subscribed to the capital stock shall exceed two hundred and fifty thousand dollars.

SECTION 3. And be it further enacted, That the persons named in the first section, or a majority of them, shall open books to receive subscriptions to the capital stock of said company, at such times and places as they, or a majority of them, may appoint; and shall give such notice of the times and places of opening said books, as they may deem reasonable; and shall receive said subscriptions under such regulations as they may adopt for the purpose; and if more than five thousand shares of stock shall be subscribed, they shall have the power to make the shares so subscribed the capital stock of said company: Provided, they shall not exceed one hundred thousand shares. And in case the subscription shall exceed one hundred thousand shares, the same shall be reduced, and apportioned in such manner as may be deemed most beneficial to the corporation.

SECTION 4. And be it further enacted, That the immediate government and direction of the affairs of said company shall be vested in a board of thirteen directors, who shall be chosen by the stock holders of said company, in the manner hereinafter provided, and shall hold their office until others are duly elected and qualified to take their places as directors; and the said directors, seven of whom,(the president being one,)shall be a quorum for the transaction of business, shall elect one of their number to be President of the Board, who shall also be Presi-

dent of said Company; they shall also choose a Secretary, and such other officers as they may deem necessary, and Treasurer, who shall give bond, with security, to said company, in such sum as the said directors may require, for the faithful discharge of his trust.

SECTION 5. And be it further enacted, That the persons authorized by the third section of this act, to open the books for subscription to the capital stock, are hereby authorized, after the books of subscription to the capital stock of said company are closed, or when the sum subscribed shall exceed two hundred and fifty thousand dollars, to call the first meeting of the stockholders of said company, in such way, and at such time and place, as they may appoint, for the choice of Directors of said company; and in all meetings of the stockholders of said company, each share shall entitled the holder thereof to one vote, which vote may be given by said stockholder in person, or by lawful proxy; and the annual meeting of the stockholders of said company, for the choice of directors, shall be holden at such time and place, and upon such notice, as the said company, in their by-laws, may prescribe.

SECTION 6. And be it further enacted, That in case it shall so happen that an election of directors shall not be made on any day appointed by the by-laws of said company, said company shall not for that cause, be deemed to be dissolved, but such election may be holden on any day which shall be ap-

pointed by the directors of said company; and said directors sh[illegible]ave power to fill any vacancies which may occu[illegible]ath, resignation, or otherwise.

SECTION 7. And be it further enacted, That the directors shall have full power to make and prescribe such by-laws, rules and regulations, as they shall deem needful and proper, touching the disposition and management of the stock, property, estate and effects of said company, not contrary to this charter, or the laws of this State, or of the United States; the transfer of shares, the duties and conduct of their officers and servants; touching the election of and meeting of the directors; and all matters whatsoever which may appertain to the concerns of said company. Said company is also hereby authorized to purchase, receive and hold such estate as may be necessary and convenient in accomplishing the object for which this incorporation is granted, and may by their agents, surveyors, engineers, and servants, enter upon all lands and tenements through which they may deem it necessary to make said road, and to survey, layout, and construct the same, and to agree and contract for the land, or right of way, with the owners, through which they may intend to make the said road. In case said lands belong to the estate of any deceased person, then with the executor or administrator of such; or in case of the same belonging to a minor, or person non-compos mentis, then, with his or her guardian or guardians; or in case said lands be held by trustees of school sections, or other trustees of estates, then

with such trustees; and the said executors, administrators, guardians and trustees are hereby declared competent for such estate, or minor, to contract with said company for the right to use, occupy and possess the lands of such estates, minors or trustees, so far as may be useful or necessary to the purposes of said rail road; and the act and deed of such executors, administrator, guardians or trustee, in relation thereto, shall pass the title in said land in the same manner as if the said deed or act was made or done by a legal owner, of full age; and such executor, administrator, guardian or trustee, shall account to those interested, upon their respective bonds, for the amount paid him in pursuance of such agreement and composition; and if the said company and parties representing lands prefer, they may refer the question of compensation to arbitrators, mutually chosen, whose award, or that of their umpire, in case of disagreement, shall vest title according to its terms.

SECTION 8. And be it further enacted, That if the said company cannot agree with the owner of the land, through which they desire said road to pass, or with the executor, administrator, guardian or trustee, it shall, and may be lawful, for the clerk of the circuit court of the county in which said land lies, on the application of said company, or its agents, and he is required to issue a writ of ad quod damnum commanding the sheriff, that without delay he cause a jury of six good and lawful men to be upon such land on a day to be by said sheriff fixed

and appointed, and whereof it shall be his duty to give notice to the owner, executor, administrator, guardian or trustee, at least five days before such day, if they be within his county; or if not, or if the owner or owners be unknown, then notice shall be given by advertisement, to be by said sheriff posted and fixed at the dwelling house, if such there be, or in a public and conspicuous place, at least five days before such appointed day, and also by advertising the same in some newspaper published nearest the land, at least three weeks by weekly insertions, prior to said day; and then cause said jury, after being duly sworn by said sheriff, or justice of the peace, to make true inquest of the damage, that will be sustained by such owner or estate, by reason of making said road through such land. If any such juror shall fail to appear, or by reason of challenge for cause, or otherwise fail to sit on said inquest, the said sheriff shall fill said jury from the by standers, and if they fail to render a verdict, the said sheriff shall again on the same or a subsequent day, empannel a new jury or jurors, until a verdict be had, such verdict and inquest, regularly certified by such sheriff, shall be returned to the office of the clerk of the circuit court of the county in which said land may be, and there remain among the records; and such verdict shall vest in said company the right to occupy and use such land for the purposes of said rail road, on the payment, or tender of payment of the damages thereon assessed, against said company; and in case of persons absent, or unknown as

aforesaid, the placing of the amount of such damages, to the credit of the owner, in the hands of the judge of the county court of the county in which such lands may lie, shall be deemed, and taken as payment; and such judges shall be liable on their bonds, to make due payment of said money on demand.

SECTION 9. And be it further enacted, That it shall be the duty of the sheriff, to appoint and hold said inquest within ten days after the receipt of said writ of ad quod damnum, except in cases of absence aforesaid, in which case, thirty days shall be allowed him, and five days in addition are allowed him for every additional jury which he may have under under said writ; and for every default therein, the said sheriff shall be fined by the circuit court, at the instance of either party, not less than twenty nor more than one hundred dollars; and every juror and witness summoned, shall be fined not less than ten dollars for non-attendance; of all such fines, as well as costs, the circuit court of the county shall have jurisdiction. There shall be allowed the following fees: to the clerk of the circuit court, for every writ of ad quad damnum, seventy-five cents: for receiving and filing inquest, seventy-five cents; to the sheriff for giving notice, seventy-five cents, besides printer's fees not exceeding two dollars in each case; for holding inquest five dollars; and for summoning witnesses, twenty-five cents each; to jurors seventy-five cents per diem, each; which fees are not allowed until a verdict be returned and filed, and shall be taxed in the bill of

costs, and paid by the company; provided, however, that before the application for said writ, the said company may make a tender to the owner or owners of any such land, a sum of money, by them deemed equivalent to the damage to be sustained, and upon refusal to accept the sum tendered, and a verdict for the same amount or a less sum, the costs shall be taxed to, and paid by the owners of the land, upon which inquest is held.

SECTION 10. And be it further enacted, That said company is hereby authorized to construct, erect, build, and use a single, double or treble railway, or road, of suitable width and dimensions to be determined by the directors of said company, on the line or course by them designated, and also, under the same rules, regulations and restrictions, and with the like privileges and immunities, as are herein granted to the main rail road, to build and construct branch rail roads on either side of the main road, not exceeding thirty miles, and shall have power to regulate the time and manner in which goods and passengers shall be transported, taken and carried on the same, and shall have power to erect and maintain toll houses and other buildings for the accommodation of their concerns, as they may deem suitable for their interests.

SECTION 11. And be it further enacted, That whenever it shall be necessary for the construction of their single, double, or treble rail road or way, to intersect or cross any stream of water or water course, or any road or highway, it shall be lawful

for said company to construct across or upon the same; but the said company shall restore the said stream or water course or road or highway thus intersected to its former state, or in sufficient manner not to impair its usefulness, and in all cases where any road or public highway is so located, that said rail road cannot be judiciously laid out and constructed across or upon the same, without interfering therewith, in such case or cases said corporation may, by their engineer, cause such road or roads to be changed or altered in such manner, that said rail road may be made on the best site of ground for that purpose: Provided, said corporation shall put such road in as good repair as at the time of changing or altering the same.

SECTION 12. And be it further enacted, That it shall be lawful for the company hereby incorporated, from time to time, to fix, regulate, and receive the toll and charges by them to be received, for transportation of persons or property, on their rail road or way aforesaid, hereby authorized to be constructed, erected, built or used, or upon any part thereof.

SECTION 13. And be it further enacted, That if any person or persons will, or shall wilfully do or cause to be done any act or acts whatsoever, whereby any building, construction or works of said company, or any engine, machine or structure, or any matter or thing appertaining to the same, shall be stopped, obstructed, impaired, weakened, injured or destroyed, the person so offending, shall be deemed

guilty of a misdemeanor, and shall forfeit and pay to said company, double the amount of damages sustained by reason of such offences or injury, to be recovered, in the name of said corporation, with costs of suit by action of debt.

SECTION 14. And be it further enacted, That the directors of said company may require the payment of the sum or sums subscribed to the capital stock of said company, at such times and in such proportions, and upon such conditions as they may deem fit; and in case any stockholder shall refuse or neglect to make payment pursuant to the requisition of the board of directors, the stock of such stockholder, or so much as shall be necessary, may be sold by the directors of said corporation at public auction, after the lapse of ninety days, from the time when the payment became due, and the surplus money, the avails of such sale, after deducting the payment due, and interest thereon, and the necessary expenses of sale, shall be paid over to such delinquent stock holder.

SECTION 15. And be it further enacted, That the property owned by the said company shall, at all times be subject to taxation, in the same manner, and to the same extent, as similar property owned by private individuals.

SECTION 16. And be it further enacted, That if the railroad shall not be commenced in five years from the passage of this act, and shall not be finished within this State, in ten years from the time of the

commencement thereof, then this act shall be null and void.

Approved, February 4, 1848.

And WHEREAS, the State of Mississippi is desirous to aid in accomplishing the objects of the said act, therefore,

SECTION 1. Be it enacted by the Legislature of the State of Mississippi, That the railroad described in the above recited act be extended in the State of Mississippi from the Alabama line to the State of Tennessee, in such a direction and on such a route as shall be deemed most expedient; and that as to said extension, there is granted to the said Mobile and Ohio railroad company, when organized, the same rights, powers, and privileges as are granted to it within the State of Alabama by the same act, subject, however, to the same and similar conditions, restrictions, modifications, and provisions as are in said act above recited, contained, and set forth, excepting the provision contained in section 15, of said act; and the said act is hereby concurred in and adopted within the State of Mississippi, in reference to the said railroad as extended and in reference to the said Mobile & Ohio Railroad company, with the exception of that portion contained in section 15, as before stated: Provided, that in case of persons absent or unknown, whose lands may be condemned pursuant to sections 7, 8, and 9, of said recited set, the placing of the amount of the damages assessed to the credit of the owner

in the hands of the state treasurer shall be taken as payment; and on such owner appearing or tendering satisfactory evidence of his claims thereto, such damages shall be paid him by the treasurer on the warrant of the auditor of public accounts.

SECTION 2. Be it further enacted, That the said Mobile and Ohio railroad company shall have full power and authority to cross with their railway tracks any railroad in the State of Mississippi, which may have been chartered prior to the passage of this act.

SECTION 3. Be it further enacted, That whenever any portion of said railroad shall be completed through this State, and is paying an interest of eight per cent. per annum on its costs, and not before, such portion may be taxed the same per centage and no more upon the capital expended in the construction thereof, as lands in this State shall be taxed.

SECTION 4. Be it further enacted, That so much of the eighth section of the above recited act of the legislature of the State of Alabama which requires certain damages therein mentioned to be placed at the credit of the owner in the hands of the county treasurer of the counties in which such land may lie, be repealed, and that all such damages shall be placed in the hands of the county treasurer in which the land may lie; and such deposite in the

hands of each county treasurer shall be deemed and taken as payment; and each county treasurer shall be liable on their official bonds to make due payment of said money on demand.

Approved February 17, 1848.

STATE

MISSISSIPPI RAILROAD COMMISSION ET AL. *v.* MOBILE & OHIO RAILROAD COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

No. 256. Submitted May 1, 1917.—Decided June 4, 1917.

While the power of the States over the railways within their borders is very great and comprehensive, the property of the railways is nevertheless protected by the fundamental guaranties of the Constitution, is entitled to as full protection as any other private property devoted to a public use, and can not be taken from its owners without just compensation or without due process of law.

An attempt upon the part of a state commission to exercise the power of regulation in such an arbitrary and unreasonable manner as to prevent a railroad company from obtaining a fair return upon its property invested in the public service is repugnant to due process of law and void under the Fourteenth Amendment.

Upon the facts of this case, *Held* that an order of the Mississippi Railroad Commission, requiring the appellee company to restore certain passenger trains to service on its line within that State, was arbitrary, unreasonable, in excess of the lawful powers of the commission, and void under the due process clause of the Fourteenth Amendment.

The reasonableness of requiring a carrier to operate specified trains can not be made to depend upon the relation of the money return to the "out-of-pocket" cost, i. e., immediate outlay for wages and fuel, involved in their operation. *Northern Pacific Ry. Co.* v. *North Dakota*, 236 U. S. 585.

The action of the Railroad Commission in this case, though expressed in a separate order as to each train directed to be restored, was based upon one citation and was intended by the commission, and treated by the court below, as in effect but one order for the restoration of all the trains; this court therefore treats it as a unity, without determining whether some improvement of the train service might not properly have been required.

Affirmed.

THE case is stated in the opinion.

Mr. James N. Flowers and *Mr. George H. Ethridge*, Assistant Attorney General of the State of Mississippi, for appellants.

Mr. S. R. Prince and *Mr. Carl Fox* for appellee.

MR. JUSTICE CLARKE delivered the opinion of the court.

This is a direct appeal from an order of the District Court for the Southern District of Mississippi, three judges sitting, granting an interlocutory injunction restraining the Mississippi Railroad Commission and the Attorney General of that State from enforcing six separate orders entered by the commission on one citation in one case on October 7, 1914, requiring the appellee to

restore to service six passenger trains—two each way daily between Meridian and Waynesboro, a town fifty-two miles to the south, and one train each way daily between Meridian and Okolona, a town one hundred and twenty-seven miles to the north—all in the State of Mississippi. The trains between Meridian and Okolona which were discontinued were interstate trains, the others were local to the State.

The appellee averred several grounds for the injunction prayed for, but the conclusion which we have reached calls upon us to consider only one of them, viz:

That the depression of business incident to the European War had so reduced the income of the railroad company that at the time the order was entered it was less than its current expenses; that a large loss would be incurred in operating each of the six trains; that without these trains there remained reasonably adequate service having regard to the population of the territory involved, and that the general financial condition of the company was such that the order if enforced would deprive the company of its property without due process of law and of the equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution of the United States.

The principles of law applicable to the decision of such a case as this record presents are few and they have become so settled and so familiar by repeated decisions of this court that extended discussion of them would be superfluous. They are these:

A State may regulate the conduct of railways within its borders, either directly or through a body charged with the duty and invested with powers requisite to accomplish such regulation. *Mississippi Railroad Commission* v. *Illinois Central R. R. Co.*, 203 U. S. 335; *Prentis* v. *Atlantic Coast Line R. R. Co.*, 211 U. S. 210; *Louisville & Nashville R. R. Co.* v. *Garrett*, 231 U. S. 298.

Under this power of regulation a State may require

carriers to provide reasonable and adequate facilities to serve not only the local necessities but the local convenience of the communities to which they are directly tributary. *Lake Shore & Michigan Southern Ry. Co.* v. *Ohio*, 173 U. S. 285; *Cleveland, Cincinnati, Chicago & St. Louis Ry. Co.* v. *Illinois*, 177 U. S. 514; *Atlantic Coast Line R. R. Co.* v. *North Carolina Corporation Commission*, 206 U. S. 1; *Missouri Pacific Ry. Co.* v. *Kansas*, 216 U. S. 262; *Chicago, Burlington & Quincy R. R. Co.* v. *Railroad Commission of Wisconsin*, 237 U. S. 220; and such regulation may extend in a proper case to requiring the running of trains in addition to those provided by the carrier, even where this may involve some pecuniary loss, *Atlantic Coast Line R. R. Co.* v. *North Carolina Corporation Commission, supra*, and *Missouri Pacific Ry. Co.* v. *Kansas, supra*.

But, while the scope of this power of regulation over carriers is very great and comprehensive, the property which is invested in the railways of the country is nevertheless under the protection of the fundamental guaranties of the Constitution and is entitled to as full protection of the law as any other private property devoted to a public use, and it cannot be taken from its owners without just compensation or without due process of law. *Wisconsin, Minnesota & Pacific R. R.* v. *Jacobson*, 179 U. S. 287; *Atlantic Coast Line R. R. Co.* v. *North Carolina Corporation Commission*, 206 U. S. 1; *Northern Pacific Ry. Co.* v. *North Dakota*, 236 U. S. 585; *Chicago, Milwaukee & St. Paul R. R. Co.* v. *Wisconsin*, 238 U. S. 491.

If this power of regulation is exercised in such an arbitrary or unreasonable manner as to prevent the company from obtaining a fair return upon the property invested in the public service it passes beyond lawful bounds, and such action is void, because repugnant to the due process of law provision of the Fourteenth Amendment to the Constitution of the United States. *Atlantic Coast Line R. R. Co.*

v. *North Carolina Corporation Commission*, 206 U. S. 1; *Missouri Pacific Ry. Co.* v. *Nebraska*, 217 U. S. 196; *Missouri Pacific Ry. Co.* v. *Tucker*, 230 U. S. 340; *Northern Pacific Ry. Co.* v. *North Dakota*, 236 U. S. 585.

Whether a statute enacted by the legislature of a State or an order passed by a railroad commission exceeds the bounds which the law thus sets to such authority is a question of law arising on the facts of each case (*Mississippi Railroad Commission* v. *Illinois Central R. R. Co.*, *supra*), and the appropriate remedy for determining that question is a bill in equity such as was filed in this case to enjoin its enforcement. *Mississippi Railroad Commission* v. *Illinois Central R. R. Co.*, *supra*; *Chicago, Milwaukee & St. Paul R. R. Co.* v. *Wisconsin*, *supra*.

With these principles in mind we pass to a consideration of the question of law which the facts of this particular case present for our decision.

The case was heard on bill, answer and testimony which are all before us, and the facts appearing may be summarized as follows:

The Mobile & Ohio Railroad Company is an interstate carrier operating a line of railway from Mobile, Alabama, to St. Louis, Missouri. This evidence is uncontradicted: That the company is not overcapitalized, that it has been wisely and economically managed and that, nevertheless, its net earnings above the cost of operation, fixed charges and taxes, and before making any allowance for betterments or for dividends, were only $85,000 for the year ending June 30, 1914. It never paid a greater dividend than five per cent. and this for only a few years in its history; in the month of July, 1914, on its entire system the company earned a surplus over fixed charges and taxes of $11,000; in the month of August it showed a deficit of $25,641, and in September the deficit became $113,627,—this without making any deduction for betterments, or improvements or dividends.

The trains ordered restored were numbered 7, 8, 9, 10, 11 and 12, and they were all put into operation by the defendant railroad company as experiments from time to time within a few years prior to 1914 without any order of the commission, in the hope of building up passenger business, but the record shows that not one of them at any time paid the cost of operation.

The territory under consideration is sparsely settled and the chief traffic of the company is lumber and cotton and the resulting general freight due to a marketing of these commodities. The depression in these staples was very great prior to and at the time the case was heard.

The uncontradicted testimony of the auditor of the company shows that the passenger revenue per train mile, of the trains ordered restored, for the three months next before the passing of the order was: For July, 65 cents, for August, 64 cents and for September, 56 cents; that the average passenger revenue per train mile of trains 7, 8, 9 and 10 from October 1st to October 5th (the next day but one before the order was passed), was 36 cents, and that of trains 11 and 12 for the same six days was 25 cents.

The auditor also testifies that as near an approximation as could be arrived at showed the total revenue of the company derived from passenger traffic for the two months ending August 31, 1914, was $331,102.85, and that the total expenses and taxes allotted to this service amounted to $339,247.60, making the passenger revenue per train mile .9708 and that the expenses and taxes per train mile amounted to .9944, or a net loss per passenger train mile of .0236.

The secretary of the company testified that on September 30, 1914, the company had a working balance of $74,885.79 and that there were unpaid vouchers amounting to $1,027,319, some of which dated as far back as November of the preceding year; that these vouchers did not represent any fixed charges or any interest, and that

the normal amount of approved unpaid vouchers was between $400,000 and $500,000.

The evidence further shows that in order to avoid insolvency the company had reduced expenses in many ways, including even the expense of repairs to locomotives and cars of every description; that the president and vice-president had voluntarily submitted to a reduction of twenty per cent. in their salaries, and that the salaries of all the other officers had been reduced on a sliding scale up to ten per cent.

The falling off in earnings for the first 17 days in October as compared with the preceding year was $165,742, or approximately $10,000 a day, and the estimated saving to the company of the taking off of the six trains involved in this controversy was $10,000 a month.

The company introduced in evidence sixty-one affidavits from what is claimed to be substantially all of the important business men in the towns which would be most affected by the taking off of the trains, who agree in saying that, while these trains were a convenience to the traveling public, owing to business conditions then prevailing there was not much travel and would not be until the trade depression was over; that the taking off of the trains would not materially injure the business of the various towns in which they lived, and that if the trains were losing money and the total business of the company was not profitable, in their judgment the company should be allowed to discontinue them.

The territory between Meridian and Waynesboro is not a productive agricultural section, and in the fifty-two miles between the two towns there are five "fair sized towns" and five small villages, which, according to the 1910 census, had a population of only 5,456, and there is no evidence that the population had increased up to the time of trial.

The service which remained between Meridian and

Waynesboro to the south, after these trains were taken off, consisted of two trains each way each twenty-four hours, and between Meridian and Okolona there remained three trains each way every twenty-four hours.

All of the trains which were continued were through interstate trains, which, while the local trains were being run, made very few stops, but when the local trains were taken off each of these trains made all the stops between Waynesboro, Meridian and Okolona, with the result that, whereas, formerly train No. 4, for example, made seven stops between Meridian and Okolona, under the new schedule it made twenty-two.

The evidence on which the Railroad Commission acted is summarized in the record and it is impressively meager in extent and inadequate in character. It consists of the testimony of two men, wholly without qualifying training or experience, as to the cost of operating such trains and of a number of men as to the inconvenience which would be caused by the taking off of the trains, chiefly to commercial travelers living in Meridian desiring to visit the small villages and hamlets on the line. The testimony of the one member of the commission who appeared as a witness shows that the reasonableness of the order was made to turn on what the commission estimated was the "out of pocket" cost, the immediate cash outlay in wages and fuel, of operating the six trains. But this cannot be accepted as a proper basis for determining such cost. *Northern Pacific Ry. Co.* v. *North Dakota*, 236 U. S. 585, 594, 596.

Thus summarized this evidence shows that the plaintiff railroad company, an important interstate carrier, was operating before the business depression incident to the war on a margin so narrow that the $85,000 of profit for the entire preceding year would have been more than swallowed up in nine days by the shrinkage of business of the company as it was when this controversy arose; that

without being able to meet its growing deficit the company had resorted to rigid economies of every sort before it discontinued these six trains the continued operation of which would have involved a loss of $10,000 a month; that the three daily trains each way to the north of Meridian which remained after the taking off of the trains which gave rise to the controversy cannot be said to be inadequate to the needs of the comparatively small population to be served, and that while the service to the south of Meridian—with but two trains each way in twenty-four hours, and these running at hours inconvenient for the transaction of business—cannot be thought a liberal service, yet these orders were intended by the commission to be in effect one order for the restoration of the six trains, they were thus treated in the court below and must be so treated here. Looking to the extent and productiveness of the business of the company as a whole, the small traveling population to be served, the character and large expense of the service required by this order, and to the serious financial conditions confronting the carrier, with the public loss and inconvenience which its financial failure would entail, we fully agree with the District Court in concluding that the order of the commission at the time and under the circumstances when it was issued was arbitrary and unreasonable and in excess of the lawful powers of the commission, and that if enforced it would result in such depriving of the railroad company of its property without due process of law as is forbidden by the Fourteenth Amendment to the Constitution of the United States. The order of the District Court granting the injunction must be

Affirmed.